

SIXTH DAY.

(Wednesday, February 26, 1930.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Barron.

The roll was called, and the following members were present:

Mr. Speaker.	Kemble.
Acker.	Kennedy.
Ackerman.	Kenyon.
Adkins.	King.
Albritton.	Kinnear.
Allred.	Lee.
Anderson.	Lemens.
Baker.	Long of Wichita.
Baldwin.	Loy.
Barnett.	Magee.
Bateman.	Mankin.
Beck.	Marks.
Bond.	Mauritz.
Bounds.	Maynard.
Bradley.	McCombs.
Brice.	McDonald.
Brooks.	McGill.
Carpenter.	Mehl.
Chastain.	Metcalfe.
Coltrin.	Moore.
Conway.	Morse.
Cox of Limestone.	Mosely.
Davis.	Mullally.
DeWolfe.	Murphy.
Dunlap.	Negley.
Enderby.	Nicholson.
Eickenroht.	Olsen.
Farrar.	Palmer.
Finlay.	Patterson.
Forbes.	Pavlica.
Gilbert.	Pool.
Giles.	Pope of Jones.
Graves.	Pope of Nueces.
of Williamson.	Prendergast.
Graves of Erath.	Purl.
Hardy.	Quinn.
Harding.	Ray.
Harman.	Reader.
Harper.	Renfro.
Harrison.	Richardson.
Heaton.	Riley.
Hines.	Rogers.
Hogg.	Sanders.
Holder.	Savage.
Hopkins.	Shaver.
Hubbard.	Shelton.
Johnson.	Simmons.
of Dallam.	Sinks.
Johnson.	Stephens.
of Dimmit.	Stevenson.
Johnson of Smith.	Storey.
Johnson of Scurry.	Tarwater.
Jones.	Tillotson.
Justiss.	Turner.
Kayton.	Van Zandt.
Keeton.	Veatch.
Keller.	Waddell.

Webb.
West.
Wiggs.
Williams
of Sabine.

Williams
of Travis.
Woodruff.
Young.

Absent.

Gates.
Hefley.
Jenkins.
Land.
Martin.
O'Neill.

Petsch.
Thompson.
Warwick.
Williams
of Hardin.

Absent—Excused.

Avis.	Montgomery.
Cox of Lamar.	Reid.
Duvall.	Rountree.
Finn.	Sherrill.
Fuchs.	Snelgrove.
Hornaday.	Speck.
Kincaid.	Terrell.
Long of Houston.	Wallace.
McKean.	Walters.
Minor.	Westbrook.

A quorum was announced present.

Prayer was offered by Rev. J. C. Mitchell, Chaplain.

LEAVES OF ABSENCE GRANTED.

The following members were granted leaves of absence on account of important business:

Mr. Finn for today, on motion of Mr. Woodruff.

Mr. Terrell for today and the balance of the week, on motion of Mr. Webb.

Mr. Duvall for today, on motion of Mr. Patterson.

Mr. Westbrook for today, on motion of Mr. Hopkins.

Mr. Wallace for today, on motion of Mr. Sanders.

Mr. Hornaday for today, on motion of Mr. Brooks.

Mr. Cox of Lamar for today, on motion of Mr. Conway.

Mr. Reid for today, on motion of Mr. Lemens.

The following members were granted leaves of absence on account of illness:

Mr. Fuchs for today, on motion of Mr. Shelton.

Mr. Snelgrove for today, on motion of Mr. Graves of Erath.

Mr. Sherrill and Mr. Avis for today, on motion of Mr. Brice.

Mr. Minor for today, on motion of Mr. Sanders.

Mr. Rountree for today, on motion of Mr. Metcalfe.

Mr. Walters was granted leave of absence for today on account of a death in his family, on motion of Mr. Farrar.

HOUSE BILLS ON FIRST READING.

The following House bills, introduced today, were laid before the House, read severally first time, and referred to the appropriate committees, as follows:

By Mr. Wiggs, Mr. Olsen and Mr. Harper:

H. B. No. 37, A bill to be entitled "An Act to impose a special privilege tax, for the exclusive use of the State, upon sales and/or distribution by gift or sale in this State, of malt extracts, derivatives or combinations thereof, sold and/or distributed by sale or gift by any person, firm, corporation, joint stock company, syndicate or association in this State, and to provide methods and penalties for its enforcement, and declaring an emergency."

Referred to Committee on Revenue and Taxation.

By Mr. McDonald, Mr. Farrar, Mr. King, and Mr. Metcalfe:

H. B. No. 38, A bill to be entitled "An Act to add to the Revised Civil Statutes of Texas for 1925 a new article to be known as Article 7047a, to provide for an occupation tax on the business or occupation of owning, operating, managing, or controlling exchange which furnish quotations on the stock market on certain commodities, or stocks and bonds; providing said act shall not apply to certain persons, firms, corporations, or associations of persons, and declaring an emergency."

Referred to Committee on Agriculture.

By Mr. McCombs:

H. B. No. 39, A bill to be entitled "An Act to amend Section 28 of Article 2092 of the 1925 Revised Civil Statutes of the State of Texas so as to provide that all motions for a new trial must be presented within thirty (30) days after the original motion has been filed, and must be determined within forty-five (45) days after said motion has been filed, and declaring an emergency."

Referred to Committee on Judiciary.

By Mr. Pope of Nueces:

H. B. No. 40, A bill to be entitled "An Act creating the 113th Judicial District Court for Nueces county; defining its jurisdiction; transferring the civil original jurisdiction of the county court of Nueces county to the court created hereby and adjusting the business of said courts; adjusting the business of the Twenty-eighth District Court

of Nueces county with the court created hereby, and declaring an emergency."

Referred to Committee on Judicial Districts.

By Mr. Graves of Erath:

H. B. No. 41, A bill to be entitled "An Act imposing a gross receipts tax upon certain individuals, companies, corporations or associations, whether incorporated under the laws of this State or nation, engaged in publishing, printing or selling text books as used or will be used in the schools of this State, or owning, controlling or managing any such business, within the State or out of it, and having State agencies within this State for the purpose of selling any such books to be used in any of the schools of this State, requiring quarterly reports each year, under oath of the individual, president or treasurer of such company, corporation or association showing gross amount received from any such business done within this State during the quarter next preceding, and declaring an emergency."

Referred to Committee on Revenue and Taxation.

By Mr. Savage:

H. B. No. 42, A bill to be entitled "An Act granting certain rights of eminent domain to water improvement districts, authorizing such districts to acquire by condemnation the fee simple title, easement or right of way in, over or through any and all lands for any of its necessary and authorized purposes, except lands used for cemetery purposes, and lands used for supplying water under the laws of this State; defining certain purposes for which property may be condemned by such districts, including the condemnation of riparian rights and the condemnation of materials to be used for any lawful purposes of water improvement districts, and creating an emergency."

Referred to Committee on Conservation and Reclamation.

By Mr. Eickenroht, Mr. Harrison, Mr. Johnson, Mr. Richardson and Mr. Conway:

H. B. No. 43, A bill to be entitled "An Act further regulating the registration of motor vehicles; making it a necessary prerequisite to register a motor vehicle that evidence be produced that State and county ad valorem taxes on said vehicle have been paid wherever such vehicle has become subject to such taxes and the time for paying same has expired, and declaring an emergency."

Referred to Committee on Revenue and Taxation.

By Mr. Mauritz, Mr. Tillotson, Mr. Pope of Jones and Mr. Harper:

H. B. No. 44, A bill to be entitled "An Act levying an excise tax on all natural and artificial gas produced by producers, as herein defined; providing for the manner of the collection of said tax, for the obtaining of a permit by producers, the manner of enforcement of the provisions hereof, declaring penalties, fines and punishment for the violation of the provisions hereof; providing for the appropriation and use of the revenues collected hereunder, and the allocation of such revenues to particular purposes; and further providing that part of the taxes so derived shall be considered in reducing the ad valorem tax rate for public free school purposes, as determined by the State Tax Board, and the manner thereof, and declaring the effective date hereof."

Referred to Committee on Revenue and Taxation.

PROVIDING FOR COMMITTEE TO ATTEND THE FUNERAL OF COL. N. R. STRONG.

Mr. Holder and Mr. Albritton offered the following resolution:

Whereas, Colonel N. R. Strong, a member of this body, whose death was announced in a resolution just adopted by the House, is to be buried at his home in Slocum, Texas, February 27, 1930; and

Whereas, It is deemed proper that the House should send a committee to attend the funeral as a further mark of respect on the part of the members of the body of which he was a member; now therefore be it

Resolved, That the Speaker do, and he is hereby authorized to appoint a committee of three to attend the funeral and burial of Colonel Strong and that the said committee be authorized to take with them a floral offering and that the cost of said floral offering and the actual and necessary expenses of the members of said committee be paid out of the contingent expense fund of the House.

Signed—Albritton, Holder.

The resolution was read second time and was adopted unanimously.

In accordance with the above action the Speaker announced the appointment of the following committee:

Messrs. Holder, Palmer and Quinn.

MESSAGE FROM THE SENATE.

Senate Chamber,

Austin, Texas, February 26, 1930.

Hon. W. S. Barron, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has passed

S. B. No. 5, A bill to be entitled "An Act amending Section 8 of Article 6203 of the Revised Civil Statutes of Texas for 1925, as amended, so as to provide for and regulate applications for parole; also amending Section 6 of said article as amended so as to provide that a person sentenced for a term not exceeding one year shall not come under this law; repealing Section 3 of said article as amended, and declaring an emergency."

Respectfully,

MORRIS C. HANKINS,

Assistant Secretary of the Senate.

REQUESTING AUDIT OF PENITENTIARY SYSTEM.

Mrs. Moore offered the following resolution:

H. C. R. No. 2, Requesting audit of the penitentiary system.

Whereas, The State prison system is one State institution upon which the eyes of the people of this State are now centered; and

Whereas, For the past several years there has been before this Legislature various and sundry bills providing many plans for the improvement of the present deplorable conditions of the prison system, none of which were based on a scientific survey of the system but merely being conclusions of individuals who are laymen and not experts; and

Whereas, The prison system is the State's greatest problem, having 5,000 or more prisoners, expending more than a million dollars each year for support and maintenance, employing many civilians to carry on its operations, having its operations scattered over the State, none of which are located near the seat of government, thus making a very complicated system; and

Whereas, We are now contemplating reorganization of this system, said reorganization to require the expenditure of an enormous sum of money by the taxpayers of this State; and

Whereas, We have in the employment of the State an auditor and efficiency expert, said office having been created May 2, 1929, during which time the auditor has made or directed the preliminary

survey of the structural organization of the State government and has brought in, in an effective way, his findings to the Governor and Legislature, but has not surveyed and audited the prison system; and

Whereas, Should the prison system be reorganized and improved, there should be installed an up-to-date system of auditing, all duplications should be eliminated and the different departments should be coordinated and the entire system be placed on a solid, efficient business basis; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring, That Mr. Moore Lynn, State Auditor and Efficiency Expert, be requested to make a survey and audit of the penitentiary system of the State of Texas, after said audit has been made by said official, or under his direction, that he report fully to the Governor and Legislature at the earliest possible date his findings, together with any recommendations that he would consider beneficial to the prison system, which report shall cover detailed information concerning said system, especially with concern to the efficiency of the operations of the system, provided, however, that said auditor shall proceed to audit said prison system after he has completed the audit on the different departments on which he is now working or directed to work.

Signed—Moore, Murphy, Kenyon.

The resolution was read second time.

Mr. Purl moved that the resolution be referred to the Committee on Penitentiaries.

On motion of Mrs. Moore, the motion by Mr. Purl was tabled.

Question then recurring on the resolution, it was adopted.

EXPRESSING APPRECIATION TO MR. MAHAFFEY, MR. GAZLEY AND MR. ETTER.

Mr. Stevenson offered the following resolution:

Whereas, The House of Representatives has heretofore employed Messrs. H. D. Mahaffey, Henry L. Gazley and Hall Etter, as the official reporters to take down and transcribe the evidence and the proceedings in connection with the investigation of charges filed against S. H. Terrell, Comptroller; and

Whereas, The work in connection therewith has been finally completed, in a manner highly satisfactory to the House managers and the membership of the Committee of the Whole House; therefore, be it

Resolved, That the House of Representatives express its appreciation of the efficient, accurate, and speedy work of each of these gentlemen; and be it further

Resolved, That this resolution be printed in the House Journal.

Signed—Stevenson, McGill.

The resolution was read second time and was adopted.

COMMITTEE IN REGARD TO QUESTIONNAIRE OF MEMBERS.

The Speaker announced the appointment of the following committee in compliance with the resolution by Mr. Harper adopted by the House:

Messrs. Harper, Bond, Johnson of Dimmit, Holder and Sinks.

ADDRESS BY GENERAL J. G. H. BUCK.

Mr. Kayton and Mr. Purl offered the following resolution:

Whereas, General J. G. H. Buck, the father of our beloved General Beaumont B. Buck, whose picture graces the Senate Chamber of Texas, is now in the House; therefore, be it

Resolved, That he be requested to address the House for ten minutes.

Signed—Kayton, Anderson, Purl.

The resolution was read second time and was adopted.

In accordance with the above action the Speaker announced the appointment of the following committee to escort General Buck to the Speaker's stand:

Messrs. Purl, Allred and Storey.

The committee having performed their duty Speaker Barron presented Mr. Purl who in turn introduced General Buck to the House.

General Buck then addressed the House.

HOUSE BILL NO. 1 ON SECOND READING.

On motion of Mr. Metcalfe, by unanimous consent, the House rule which relates to the time required for a printed bill to be placed on a member's desk before it is considered by the House was suspended at this time.

The Speaker then laid before the House, on its second reading and passage to engrossment,

H. B. No. 1, A bill to be entitled "An Act to amend Section 3 of Chapter 212, Acts of Regular Session, Fortieth Legislature, so as to create the Texas

Prison Board, composed of three members; providing for the appointment of the members of the board; prescribing certain qualifications of such appointees; fixing the term of office; providing for the filling of vacancies which may occur; abolishing present board of nine members; repealing all laws in conflict with this act, and declaring an emergency."

The bill was read second time.

(Mr. Stevenson in the chair.)

Mr. Metcalfe offered the following (committee) amendments to the bill:

(1)

Amend Section 1 of House bill No. 1 by striking out all of said section after the figures "3" in line four of said section and substitute in lieu thereof the following:

"There is hereby created the Texas Prison Board, which shall be composed of six members to be appointed by the Governor with the advice and consent of the Senate, such appointments shall be made bi-annually or on or before February 15th. Each member of said board shall be a State officer within the meaning of the Constitution, and before entering upon the discharge of his duties shall take the constitutional oath of office. The term of office of each member shall be six years, except that in making the first appointments the Governor shall appoint two members for a term of two years, two members for a term of four years, and two members for a term of six years, so that the terms of two members shall expire every two years. Vacancies occurring in the board shall be filled by appointment of the Governor for the unexpired term."

(2)

Amend Section 4 of House bill No. 1 by striking out of said section the word "three" in line three of said section and substitute in lieu thereof the word "six."

(3)

Amend the caption of House bill No. 1 by striking out of said caption the word "three" and substitute in lieu thereof the word "six."

On motion of Mr. Pope of Nueces, the (committee) amendments were severally tabled.

Mr. Finlay offered the following amendment to the bill:

Amend Section 1 of House bill No. 1 by striking out all of said section after the word and figure "Section 3" and insert in lieu thereof the following:

"There is hereby created the Texas Prison Board to be composed of three members to be selected and to hold office as follows:

"Two of the Prison Board shall be selected by the Governor, one of whom shall be a member of the major political party of this State and the other a member of the minor political party of this State. These two members, after appointment and after taking the oath of office, shall select the third member of the board and the three members shall draw lots for the length terms they shall hold, which shall be two, four and six years. All vacancies occurring in the office of those appointed by the Governor shall be filled by the Governor by appointment for the term of office. Vacancies occurring in the place selected by the two members shall be filled by selection by said members, whenever vacancies occur. Each member shall be a State officer within the meaning of the Constitution and shall take the constitutional oath of office before entering upon such duties."

Mr. Metcalfe raised a point of order on further consideration of the amendment, on the ground that the amendment is unconstitutional.

The Speaker sustained the point of order.

House bill No. 1 was then passed to engrossment.

HOUSE BILL NO. 1 ON THIRD READING.

Mr. Metcalfe moved that the constitutional rule requiring bills to be read on three several days be suspended and that House bill No. 1 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—97.

Mr. Speaker.	Coltrin.
Acker.	Conway.
Ackerman.	Cox of Limestone.
Adkins.	Davis.
Albritton.	Dunlap.
Allred.	Enderby.
Anderson.	Farrar.
Baker.	Finlay.
Barnett.	Gilbert.
Bateman.	Giles.
Beck.	Graves
Bond.	of Williamson.
Bounds.	Hardy.
Bradley.	Harding.
Brice.	Harman.
Brooks.	Harper.
Carpenter.	Harrison.
Chastain.	Hines.

Hogg.	Mullally.
Holder.	Negley.
Hopkins.	Olsen.
Johnson	Palmer.
of Dallam.	Pavlica.
Johnson	Pool.
of Dimmit.	Pope of Nueces.
Johnson of Smith.	Prendergast.
Johnson of Scurry.	Purl.
Jones.	Quinn.
Justiss.	Ray.
Kayton.	Renfro.
Keeton.	Richardson.
Kemble.	Riley.
Kennedy.	Rogers.
Kenyon.	Sanders.
Kinnear.	Savage.
Lee.	Simmons.
Lemens.	Sinks.
Long of Wichita.	Stephens.
Magee.	Stevenson.
Mankin.	Storey.
Marks.	Tarwater.
Mauritz.	Tillotson.
Maynard.	Van Zandt.
McCombs.	Veatch.
McDonald.	Webb.
McGill.	West.
Mehl.	Williams
Metcalfe.	of Sabine.
Moore.	Williams
Morse.	of Travis.
Mosely.	Woodruff.

Nays—5.

Eickenroht.	Turner.
Forbes.	Waddell.
Pope of Jones.	

Present—Not Voting.

Wiggs.

Absent.

Baldwin.	Murphy.
DeWolfe.	Nicholson.
Gates.	O'Neill.
Graves of Erath.	Patterson.
Heaton.	Petsch.
Hefley.	Reader.
Hubbard.	Shaver.
Jenkins.	Shelton.
Keller.	Thompson.
King.	Warwick.
Land.	Williams
Loy.	of Hardin.
Martin.	Young.

Absent—Excused.

Avis.	Long of Houston.
Cox of Lamar.	McKean.
Duvall.	Minor.
Finn.	Montgomery.
Fuchs.	Reid.
Hornaday.	Rountree.
Kincaid.	Sherrill.

Snelgrove.	Wallace.
Speck.	Walters.
Terrell.	Westbrook.

The Speaker then laid House bill No. 1 before the House on its third reading and final passage.

The bill was read third time, and was passed by the following vote:

Yeas—95.

Mr. Speaker.	Kinnear.
Acker.	Lee.
Ackerman.	Lemens.
Adkins.	Long of Wichita.
Albritton.	Magee.
Allred.	Mankin.
Anderson.	Marks.
Barnett.	Mauritz.
Beck.	Maynard.
Bond.	McCombs.
Bounds.	McDonald.
Bradley.	McGill.
Brice.	Mehl.
Carpenter.	Metcalfe.
Chastain.	Moore.
Coltrin.	Morse.
Conway.	Mosely.
Cox of Limestone.	Mullally.
Davis.	Negley.
Dunlap.	Olsen.
Enderby.	Palmer.
Ewing.	Pavlica.
Farrar.	Pool.
Finlay.	Pope of Nueces.
Gilbert.	Prendergast.
Giles.	Quinn.
Graves	Ray.
of Williamson.	Reader.
Hardy.	Renfro.
Harding.	Richardson.
Harman.	Riley.
Harrison.	Rogers.
Hines.	Sanders.
Hogg.	Savage.
Holder.	Simmons.
Hopkins.	Sinks.
Johnson	Stephens.
of Dallam.	Stevenson.
Johnson	Storey.
of Dimmit.	Strong.
Johnson of Smith.	Tarwater.
Johnson of Scurry.	Van Zandt.
Jones.	Veatch.
Justiss.	Webb.
Kayton.	West.
Keeton.	Williams
Keller.	of Sabine.
Kemble.	Williams
Kennedy.	of Travis.
Kenyon.	Woodruff.

Nays—7.

Brooks.	Forbes.
Eickenroht.	Pope of Jones.

Turner.
Waddell.

Wiggs.

Absent.

Baker.
Baldwin.
Bateman.
DeWolfe.
Gates.
Graves of Erath.
Harper.
Heaton.
Hefley.
Hubbard.
Jenkins.
King.
Land.
Loy.
Martin.

Murphy.
Nicholson.
O'Neill.
Patterson.
Petsch.
Purl.
Shaver.
Shelton.
Thompson.
Tillotson.
Warwick.
Williams
of Hardin.
Young.

Absent—Excused.

Avis.
Cox of Lamar.
Duvall.
Finn.
Fuchs.
Hornaday.
Kincaid.
Long of Houston.
McKean.
Minor.

Montgomery.
Reid.
Rountree.
Sherrill.
Snelgrove.
Speck.
Terrell.
Wallace.
Walters.
Westbrook.

HOUSE BILL NO. 24 ON SECOND READING.

On motion of Mr. Keller, the House rule which relates to a printed bill being placed on a member's desk, was suspended to take up and have placed on its second reading and passage to engrossment.

H. B. No. 24, A bill to be entitled "An Act amending Article 279 of Chapter 4, of the Code of Criminal Procedure of the 1925 Revised Statutes of the State of Texas, so as to better explain and define the qualifications of sureties on criminal bonds, providing things incidental to, and declaring an emergency."

The Speaker laid the bill before the House and it was read second time.

Mr. Hines offered the following amendment to the bill:

Amend House bill No. 24 by adding after the word "bond," in line 19, page 1, the following: "other than in misdemeanor cases."

The amendment was adopted.

Question—Shall the bill be passed to engrossment?

RECESS.

On motion of Mr. Wiggs, the House, at 12 o'clock m., took recess to 2 o'clock p. m. today.

AFTERNOON SESSION.

The House met at 2 o'clock p. m., and was called to order by the Speaker.

Mr. Woodruff moved a call of the House for the purpose of maintaining a quorum until 3 o'clock p. m. today, and the call was duly ordered.

The Speaker then directed the Doorkeeper to close the main entrance to the Hall and instructed the Sergeant-at-Arms to lock all other doors leading from the Hall, and stated that no member would be permitted to leave the Hall without written permission from the Speaker.

On motion of Mr. Woodruff, the Sergeant-at-Arms was instructed to bring in all absent members within the city who are not ill.

SENATE BILL ON FIRST READING.

The following Senate bill, received from the Senate today, was laid before the House, read first time and referred to the appropriate committee, as follows:

Senate bill No. 5, to the Committee on Penitentiaries.

HOUSE BILL NO. 24 ON PASSAGE TO ENGROSSMENT.

The House resumed consideration of pending business, same being House bill No. 24, relative to sureties on criminal bonds, the bill having heretofore been read second time.

Mr. Storey offered the following amendment to the bill:

Amend House bill No. 24 as follows: Add after the word "herein" in line 17, page 1, the following: "provided, that in case funds are escrowed in a way and manner satisfactory to the officer who approves said bond to guarantee its payment, then the sureties need not be required to swear that they are worth double the amount of the bond over and above exemptions and other bonds they are on."

The amendment was adopted:

Mr. Keller offered the following amendments to the bill:

(1)

Amend House bill No. 24, below the enacting clause, by adding a new section, to be known as Section 1a, to read as follows:

"Provided, nothing herein shall be construed to repeal Article 277 of the Code of Criminal Procedure of the 1925 Revised Statutes."

(2)

Amend House bill No. 24, below the enacting clause, by striking out the words "each of" in line 21.

The amendments were severally adopted.

Mr. Kenyon offered the following amendment to the bill:

Amend House bill No. 24 as follows: By striking out the enacting clause.

(Pending consideration of the amendment, Mr. Stevenson occupied the chair temporarily.)

Pending consideration of House bill No. 24, Mr. Anderson moved to reconsider the vote by which the House on yesterday adopted a resolution by Mr. Harper, providing for members to fill out a certain questionnaire.

Mr. Bond raised a point of order on further consideration of the motion by Mr. Anderson on the ground that it is not in order, since House bill No. 24 is now pending before the House.

The Speaker sustained the point of order.

Mr. Anderson moved the previous question on the amendments on House bill No. 24 filed with the Speaker and the bill, and the main question was ordered.

Mr. Purl moved to reconsider the vote by which the previous question was ordered on the pending amendments and the bill, and the motion to reconsider was lost.

Question then recurring on the amendment by Mr. Kenyon, yeas and nays were demanded.

The amendment was adopted by the following vote:

Yeas—52.

Adkins.	Harrison.
Albritton.	Heaton.
Baker.	Hines.
Barnett.	Hopkins.
Bateman.	Johnson of Smith.
Beck.	Johnson of Scurry.
Bradley.	Jones.
Brooks.	Justiss.
Chastain.	Kenyon.
Conway.	Kinnear.
DeWolfe.	Lee.
Dunlap.	Magee.
Enderby.	Maynard.
Eickenroht.	McDonald.
Farrar.	McGill.
Finlay.	Moore.
Graves of Erath.	Murphy.
Harding.	Olsen.
Harman.	Palmer.
Harper.	Pavlica.

Richardson.
Shaver.
Shelton.
Simmons.
Storey.
Tarwater.

Tillotson.
Turner.
Veatch.
Waddell.
West.
Woodruff.

Nays—43.

Ackerman.
Allred.
Bond.
Bounds.
Brice.
Carpenter.
Coltrin.
Davis.
Forbes.
Giles.
Graves
of Williamson.
Hardy.
Holder.
Johnson
of Dallam.
Johnson
of Dimmit.
Keeton.
Keller.
Kemble.
Kennedy.
Kincaid.
Long of Wichita.

Loy.
McCombs.
Morse.
Mosely.
Mullally.
Negley.
Nicholson.
Patterson.
Pool.
Pope of Jones.
Purl.
Quinn.
Reader.
Renfro.
Riley.
Rogers.
Savage.
Sinks.
Stephens.
Van Zandt.
Williams
of Travis.
Young.

Present—Not Voting.

Mr. Speaker.	Metcalfe.
Anderson.	Pope of Nueces.
Cox of Limestone.	Sanders.
Marks.	Stevenson.
Mauritz.	Webb.

Absent.

Acker.	Martin.
Baldwin.	Mehl.
Gates.	O'Neill.
Gilbert.	Petsch.
Hefley.	Prendergast.
Hogg.	Ray.
Hubbard.	Thompson.
Jenkins.	Warwick.
Kayton.	Wiggs.
King.	Williams
Land.	of Sabine.
Lemens.	Williams
Long of Houston.	of Hardin.
Mankin.	

Absent—Excused.

Avis.	Reid.
Cox of Lamar.	Rountree.
Duvall.	Sherrill.
Finn.	Snelgrove.
Fuchs.	Speck.
Hornaday.	Terrell.
McKean.	Wallace.
Minor.	Walters.
Montgomery.	Westbrook.

Mr. Woodruff moved to reconsider the vote by which the amendment was adopted, and to table the motion to reconsider.

The motion to table prevailed.

Reason for Vote.

I voted against House bill No. 24 by Mr. Keller et al., which had to do with bail bonds and affidavits in connection therewith, because I thought it too drastic and oppressive and calculated in some instances to work undue hardships upon citizens of this State. I am in thorough accord with the purpose of the measure to do away with straw bonds and the professional bond maker, and will actively join in a measure for that purpose. I also think that the court rule as to attorneys going on bonds, especially in criminal cases, should be strictly enforced, and I am ready to help enact legislation for that purpose.

STOREY.

MESSAGE FROM THE SENATE.

Senate Chamber,
Austin, Texas, February 26, 1930.
Hon. W. S. Barron, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has passed:

H. C. R. No. 2, Directing the State Auditor to make an audit and survey of the State penitentiary system.

Respectfully,

MORRIS C. HANKINS,
Assistant Secretary of the Senate.

TO EXPUNGE CERTAIN RESOLUTION FROM THE RECORD.

Mr. Kemble offered the following resolution:

Whereas, The House passed a resolution which reflects on the integrity of members of this House; and

Whereas, The action in the premises was taken hurriedly and ill advisedly; therefore, be it

Resolved, That the Journal of the House be expunged of all record of the resolution Harper et al.

Signed—Kemble, Beck, Morse, Patterson, McCombs, Hardy.

The resolution was read second time.

Mr. Kennedy moved to table the resolution.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—64.

Ackerman.	Mauritz.
Adkins.	McDonald.
Baker.	McGill.
Barnett.	Metcalfe.
Bateman.	Moore.
Bond.	Mosely.
Bounds.	Murphy.
Brice.	Negley.
Coltrin.	Palmer.
Conway.	Pavlica.
Cox of Limestone.	Pool.
Davis.	Pope of Jones.
Eickenroht.	Prendergast.
Farrar.	Quinn.
Finlay.	Ray.
Gilbert.	Reader.
Giles.	Renfro.
Harman.	Richardson.
Harper.	Rogers.
Heaton.	Sanders.
Hines.	Savage.
Johnson	Shelton.
of Dallam.	Stephens.
Johnson	Stevenson.
of Dimmit.	Storey.
Keeton.	Turner.
Kennedy.	Waddell.
Kenyon.	Webb.
King.	West.
Lee.	Williams
Long of Wichita.	of Travis.
Loy.	Woodruff.
Magee.	Young.
Marks.	

Nays—34.

Allred.	Keller.
Anderson.	Kemble.
Beck.	Kincaid.
Brooks.	Kinnear.
Carpenter.	McCombs.
DeWolfe.	Morse.
Dunlap.	Mullally.
Enderby.	Nicholson.
Forbes.	Olsen.
Graves	Patterson.
of Williamson.	Pope of Nueces.
Hardy.	Purl.
Harrison.	Riley.
Hopkins.	Shaver.
Hubbard.	Sinks.
Johnson of Smith	Tillotson.
Johnson of Scurry.	Veatch.
Justiss.	

Present—Not Voting.

Albritton.	Simmons.
Holder.	Van Zandt.
Jones.	

Absent.

Acker.	Chastain.
Baldwin.	Cox of Lamar.
Bradley.	Gates.

Graves of Erath.	Mehl.
Harding.	O'Neill.
Hefley.	Petsch.
Hogg.	Tarwater.
Jenkins.	Thompson.
Kayton.	Warwick.
Land.	Wiggs.
Lemens.	Williams
Long of Houston.	of Sabine.
Mankin.	Williams
Martin.	of Hardin.
Maynard.	

Absent—Excused.

Avis.	Rountree.
Duvall.	Sherrill.
Finn.	Snelgrove.
Fuchs.	Speck.
Hornaday.	Terrell.
McKean.	Wallace.
Minor.	Walters.
Montgomery.	Westbrook.
Reid.	

Mr. Morse moved to reconsider the vote by which the resolution was tabled, and to table the motion to reconsider. The motion to table prevailed.

Reason for Vote.

I am a member of the committee charged with the duty of making investigation, and consider I should be non-partisan.

HOLDER.

RELATIVE TO CERTAIN QUESTIONNAIRE FOR MEMBERS.

Mr. Anderson moved to reconsider the vote by which the resolution by Mr. Harper relative to certain questionnaire for members was, on yesterday, adopted.

Mr. Morse offered the following resolution:

Whereas, The House of Representatives on Tuesday, February 25, 1930, passed a simple resolution requiring its members to answer certain questions; and

Whereas, The said resolution did not provide for any disposition of the information after it has been procured; now, therefore, be it

Resolved by the House of Representatives, That the committee authorized to secure this information be directed to make a full and complete report to the House as a whole, which report shall be printed in the House Journal, together with the recommendations of the committee; and be it further

Resolved, That the representatives of the newspapers of the State be fur-

nished with copies of the report for publication.

The resolution was read second time and was adopted.

ADJOURNMENT.

Mr. Anderson moved that the House adjourn until 10 o'clock a. m. tomorrow.

Mr. Finlay moved that the House adjourn until 9 o'clock a. m. tomorrow.

Mr. Purl moved that the House recess to 10 o'clock a. m. tomorrow.

The motion of Mr. Anderson prevailed, and the House accordingly, at 5:45 o'clock p. m., adjourned until 10 o'clock a. m. tomorrow.

APPENDIX.

STANDING COMMITTEE REPORTS.

The following committee has today filed favorable reports on bills, as follows:

Highways and Motor Traffic: House bills Nos. 32 and 5.

REPORTS OF THE COMMITTEE ON ENGROSSED BILLS.

Committee Room,
Austin, Texas, February 26, 1930.

Hon. W. S. Barron, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 1, A bill to be entitled "An Act to amend Section 3 of Chapter 212, Acts of Regular Session, Fortieth Legislature, so as to create the Texas Prison Board, composed of three members; providing for the appointment of the members of the Board; prescribing certain qualifications of such appointees; fixing the term of office; providing for the filling of vacancies which may occur; abolishing present Board of nine members; repealing all laws in conflict with this act, and declaring an emergency,"

Has carefully compared same and find it correctly engrossed.

McCOMBS, Chairman.

Committee Room,
Austin, Texas, February 26, 1930.

Hon. W. S. Barron, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 2, A bill to be entitled "An Act relating to occupation tax on

the production of sulphur; providing for an occupation tax of one (\$1.00) dollar per long ton of all sulphur produced within the State of Texas; providing for reports and records; imposing forfeitures and penalties for failure to keep records; providing penalties for failure to pay tax; directing the bringing of suit for the recovery of taxes, penalties and interest; providing for the appropriation and use of the revenues collected hereunder, and further providing that the taxes so derived shall be considered in reducing the tax rate for

public free school purposes as determined by the State Tax Board and the manner thereof; and enacting other provisions incident and necessary to the subject and purpose of this act; and declaring legislative intent; repealing all laws or parts of laws in conflict with this act; expressly repealing Article 7066, Revised Civil Statutes, and declaring an emergency,"

Has carefully compared same and find it correctly engrossed.

McCOMBS, Chairman.

In Memory
of
Col. M. R. Strong

Mr. Holder offered the following resolution:

Whereas, The Honorable N. R. Strong, a member of the Forty-first Legislature, was in the early hours of this day, Wednesday, February 26, A. D. 1930, called in death at his home in Slocum, Anderson county, Texas; and

Whereas, Colonel Strong was an outstanding citizen of East Texas, having distinguished himself as a business man and particularly in the insurance field and as a citizen always ready, able and willing to lend his best efforts for the uplift of the community in which he resided throughout a long and honorable career; and

Whereas, As a member of the Forty-first Legislature Colonel Strong consistently distinguished himself as a man thoroughly alert and active in the interests of the common people of this State, able at all times to exercise a cool and deliberate judgment in affairs affecting the welfare of the entire State, being able to see with a brilliant mind the cause and effects of legislation proposed. He was able through the exercise of a wonderful Southern chivalry to compose differences and propose solutions to the many vexing problems that came before this Legislature in his modest unassuming way. With his long experience in public affairs, he was able to direct and to take part in many constructive movements that have made the accomplishment of this Legislature of remarkable value to the people of Texas. He had a delightful tact and ability to make friends and to win the love, respect, and affections of his colleagues of the Forty-first Legislature; therefore, be it

Resolved by the House of Representatives of the Forty-first Legislature, That we express our sincere sympathy to the family, relatives and friends of our departed colleague and that a page of the Journal be set aside to the memory of the deceased; and that when the House adjourns at the close of its labors on this day, that it do so in memory of and respect to him; and, be it further

Resolved, That the Chief Clerk be, and she is hereby, instructed to send an enrolled copy of this resolution to his family.

Signed—Holder, Palmer, Davis, Barron (Speaker), Acker, Ackerman, Adkins, Albritton, Allred, Anderson, Avis, Baker, Baldwin, Barnett, Bateman, Beck, Bond, Bounds, Bradley, Brice, Brooks, Carpenter, Chastain, Coltrin, Conway, Cox of Lamar, Cox of Limestone, DeWolfe, Dunlap, Duvall, Enderby, Eickenroht, Farrar, Finn, Finlay, Forbes, Fuchs, Gates, Gilbert, Giles, Graves of Williamson, Graves of Erath, Hardy, Harding, Harman, Harper, Harrison, Heaton, Hefley, Hines, Hogg, Hopkins, Hornaday, Hubbard, Jenkins, Johnson of Dallam, Johnson of Dimmit, Johnson of Smith, Johnson of Scurry, Jones, Justiss, Kayton, Keeton, Keller, Kemble, Kennedy, Kenyon, Kincaid, King, Kinnear, Land, Lee, Lemens, Long of Houston, Long of Wichita, Loy, Magee, Mankin, Marks, Martin, Mauritz, Maynard, McCombs, McDonald, McGill, McKean, Mehl, Metcalfe, Minor, Montgomery, Moore, Morse, Mosely, Mullally, Murphy, Negley, Nicholson, Olsen, O'Neill, Patterson, Pavlica, Petsch, Pool, Pope of Jones, Pope of Nueces, Prendergast, Purl, Quinn, Ray, Reader, Reid, Renfro, Richardson, Riley, Rogers, Rountree, Sanders, Savage, Shaver, Shelton, Sherrill, Simmons, Sinks, Snelgrove, Speck, Stephens, Stevenson, Storey, Tarwater, Terrell, Thompson, Tillotson, Turner, Van Zandt, Veatch, Waddell, Wallace, Walters, Warwick, Webb, West, Westbrook, Wiggs, Williams of Sabine, Williams of Hardin, Williams of Travis, Woodruff, Young.

The resolution was read second time.

On motion of Mr. Holder, by unanimous consent, the names of all the members of the House were added to the resolution as signers of the resolution.

Hon. B. J. Forbes, being invited, spoke as follows:

Mr. Speaker and Members of the House:

As I have spent a great portion of my life in going over the country as a messenger of mercy, speaking a word of comfort to the living and a sweet word of praise for the dead, I feel I should offer a word in behalf of our departed members, Brother Ewing and Brother Strong, as you see their white lights on the board, which means present, not voting, but really that they are dead and only present in spirit. Brother Ewing once taught school in Weatherford, my home town. He was a sweet old character and everybody in Weatherford loved him and he loved them and would always send his greetings to them by me and they to him. Brother Strong was also a dear old character, and we all loved him, and I wish to offer a few sweet words in memory of both, which I have written in verse:

(1)

All that is left of our friends of old,
In this world of ours, is their hallowed moulds,
Which will rest in caskets far away
Beneath the sod that wraps their clay.

(2)

For God has taken their spirits above,
From a world of suffering and a mission of love,
To a home in the heavens above the air,
To the place where Jesus has gone to prepare.

(3)

We are growing old as the years pass on;
We, too, as others, will soon be gone;
But in passing this life I shall pass it in prayer
For the realization of meeting them there.

(4)

And in passing beyond the Pearly Gates,
Among the celestials that watchfully wait,
I know I shall see them in regions of light,
In glorified bodies, in garments of white.

(5)

In the Home of the Ransomed, in a "City of Gold,"
Where death never comes and we never "grow old,"
Where life's laden tree is fruited for all
Who in the God-given faith have answered the call.

The resolution was then adopted by a rising vote.

PROCEEDINGS IN INVESTIGATION
OF CHARGES FILED AGAINST
S. H. TERRELL, COMP-
TROLLER.

MONDAY, FEBRUARY 24, 1930.

Morning Session.

The Committee of the Whole met at 10 o'clock a. m. this day, pursuant to adjournment.

Mr. Sanders of Nacogdoches: Mr. Chairman, I move that the House resolve itself into Committee of the Whole.

The Chairman: The gentleman from Nacogdoches moves that the House resolve itself into Committee of the Whole for the purpose of continuing the hearing. As many as favor the motion that the House resolve itself into Committee of the Whole House will say "aye"; those opposed, "no." The "ayes" have it. The Committee of the Whole House will please be in order. I will ask the attorneys for the House, especially Mr. Stephenson and Mr. McGill, as to whether they have any other witnesses or any further testimony.

Mr. Coltrin of San Patricio: Mr. Chairman.

The Chairman: The gentleman from San Patricio.

Mr. Coltrin: I have been waiting, I would like to make inquiry. What about these House Journals containing the record? I haven't received any of the Journals at all with any of the record.

The Chairman: You haven't received the Journal with any of the testimony in it?

Mr. Coltrin: No, sir.

The Chairman: Call back in the Sergeant-at-Arms' room if you want the Journal with some of the testimony. The testimony is not printed up today; it can only be printed in installments.

Mr. Purl: I understand we are paying the court reporters a little extra pay to have it delivered in twenty-four hours.

The Chairman: That is right.

Mr. Purl: I am willing, as far as I am concerned, to pay the printer a little extra so we can have the record to study before we call on to vote.

The Chairman: As far as the reporters are concerned, they will do their part. The record has been held up today because of the necessity of securing some photostatic copies. I understand that during the investigation some time ago, in the Robison case, the Journal printers delayed the report considerably.

Mr. Purl: Yes, sir; I understand.

Mr. Petsch: The House of Representatives will rest. We are ready to rest.

The Chairman: Mr. Petsch, Mr. McGill and Mr. Stevenson, the attorneys representing the House, state they are ready to rest. The attorneys for Mr. Terrell?

Mr. McGregor: Mr. McKay, take the stand.

John G. McKay was thereupon called as a witness in behalf of the respondent, and having been duly sworn by the Chairman, testified as follows:

Direct Examination.

Questions by Mr. McGregor:

Q. State your name?

A. John G. McKay.

Q. How old are you, Mr. McKay?

A. Fifty-seven.

Q. How long have you held office in Texas?

A. Either by election or appointment, for thirty years.

Q. What position did you first hold?

A. Well, the first position, I was elected constable.

Q. How long did you serve?

A. I was elected twice.

Q. Then what position did you hold?

A. I was next elected district clerk at Belton.

Q. How long did you serve as district clerk?

A. A year.

Q. Then what position did you hold?

A. I was then appointed State Purchasing Agent by Governor Colquitt.

Q. Before you were elected district clerk, were you a deputy sheriff?

A. I was in the sheriff's office more than two years.

Q. Under whom did you serve?

A. Sam Sparks.

Q. And in what county?

A. Bell county.

Q. When were you appointed Purchasing Agent of Texas?

A. 1911—January, 1911.

Q. By whom?

A. Governor Colquitt.

Q. How long did you serve?

A. When I was first appointed, I served the first term, and was appointed to serve a portion of that term—

Q. Now, wait a minute. What were the duties of Purchasing Agent when you filled that position?

A. The duties of Purchasing Agent at that time were similar to those of the Board of Control today, except—

Q. Yes, sir?

A. They were not quite so—well, the Purchasing Agent merely made the pur-

chases of all supplies and equipment of all the eleemosynary institutions.

Q. Now, what position did you hold after you were Purchasing Agent?

A. I was next appointed Secretary of State.

Q. By whom?

A. Governor Ferguson.

Q. How long did you serve as Secretary of State?

A. A little more than two years.

Q. Then where did you work for the State?

A. And then I assumed management of the Ferguson and Eastland penitentiary farms.

Q. Under whose appointment?

A. One under Governor Ferguson, and then was reappointed by Governor Hobby.

Q. What next position did you hold?

A. My next employment wasn't with the State.

Q. The next official appointment, what was it?

A. I went to work then next for Lon Smith, in the Comptroller's office.

Q. Did you work for H. B. Terrell?

A. I did not.

Q. When did you go in the Comptroller's Department under Lon Smith?

A. I believe it was in February, 1923, I believe.

Q. How long did you work for Mr. Smith in that office?

A. I was with Mr. Smith until the expiration of his term as Comptroller, in January, 1925.

Q. For whom did you go to work then?

A. I was then employed by Mr. Terrell, the present Comptroller.

Q. In what capacity?

A. I was appointed as inheritance tax auditor.

Q. What were your duties in the Comptroller's Department during the regime of Lon Smith?

A. I was tax auditor.

Q. How long have you filled the position of inheritance tax auditor under Mr. S. H. Terrell?

A. I hold that position now.

Q. Did you, as inheritance tax officer, or do you, hold a desk?

A. I am not at the head of a desk. Up till last May Mr. Woodall was the head of that division. Since his death I have assumed charge of that desk.

Q. You succeeded Mr. Woodall upon his death?

A. Yes, sir.

Q. Are you familiar with the records and activities of that desk during your

own administration and prior administration?

A. I am.

Q. How many non-resident estates have passed through that desk since its creation—since Mr. Terrell has been in office?

A. There have been 2,100 non-resident estates filed in this Department for inheritance tax appraisalment.

Q. How many resident estates have passed over that desk since Mr. Terrell's incumbency?

A. A few more than 3,900.

Q. Making approximately 6,000 estates?

A. Approximately.

Q. How much money has been collected through that desk since Mr. Terrell has been in office?

A. Do you refer to money collected from non-resident estates?

Q. Well, we will take it that way, then. How much money has been collected from non-resident estates?

A. Prepared a statement.

Q. At my request?

A. At your request, furnishing that information. There has been collected from non-resident estates since Mr. Terrell has been Comptroller, as shown by the records on file in this Department, \$347,923.67.

Q. How much has been collected from resident estates since Mr. Terrell has been Comptroller?

A. I will state that in handling resident estates filed for inheritance tax, I assume that the money finally passed over that desk, but the records in that division, as evidenced by receipts issued by the tax collectors of the several counties in which the estates originated, show that taxes of \$5,588,137.00 net have been collected from that source.

Q. What is the total of the non-resident and the resident?

A. I believe that I have got those figures, that is, the total—the figures I just gave you are the total of resident estates are \$5,240,214.00; the non-resident, \$347,923.67; making a total of \$5,588,137.00.

Q. Have you prepared at my request a list showing the names, dates and amount of taxes assessed against each estate and having Treasury deposit warrant number of each collection and date of deposit?

A. I don't believe that you asked the question you intended to ask. You intended to ask if I had that information as to non-resident estates, I believe.

Q. That is right?

A. I have; I have a list of every estate.

Q. Wait just a minute, now. Mr. McKay, have you a list of the resident estates, also?

A. No, I haven't a list of the resident estates, also.

Q. The resident estates. Now, have you the warrant numbers showing where that money was covered into the State and those items that went to the State?

A. I have.

Q. Have you the data showing refund of the money that went back to the State when it was held in escrow?

A. I have.

Q. Is that in tabulated form?

A. Yes, sir.

Q. Now, when you made this deposit for the State, just explain the system by which that is done, Mr. McKay.

A. Personally, I have never made any deposits in the State Treasury or in any bank. When a check was received in payment for tax assessed against a non-resident estate, that check was passed to a depository clerk, Miss Willman, and I would take her receipt for the amount, showing the deposit with the State Treasury.

Mr. Petsch: Would you state that again? You stated it was turned over to the depository clerk?

A. It was turned over to the depository clerk; we took from the depository clerk her receipt for the check.

Q. Has the State Auditor audited your desk as to non-resident estates?

A. They have.

Q. Did he have access to all the files and records of your office?

A. He did.

Q. Were there any files or records missing?

A. Not a one.

Q. Did you assist the Auditor in his investigation?

A. I did.

Q. Have you the names of all estates in which money was paid in the Comptroller's office through your desk under protest?

A. I have.

Q. Would you give us the names and amounts of money from those estates, and the disposition of it?

A. On April 3, 1925, we received a check for \$957.00, paid in by the estate of T. B. Allen, a non-resident, under protest.

Q. What become of that money?

A. On June 10, 1925, this sum was refunded to T. B. Allen estate for the reason that it developed it was not sub-

ject to a tax. On June 10, 1925, we received two checks, totaling the sum of \$4,043.96, paid under protest by the Meisner estate, which is a non-resident estate. On March 13, 1926, this sum was refunded to the estate, for the reason that they filed an amended affidavit, reporting the estate, upon which the tax was later paid. On June 16, 1925, we received a check for \$2,939.43 from the Charles E. Herman estate. This was a non-resident estate. And on July 2, 1925, \$3,909.04 of this sum was paid into the State Treasury, as evidenced by the Treasurer's receipt warrant, No. 4282; on the same day a refund to the estate of \$30.39 was made; making the total amount originally received. On December 22, 1925, we received a check for the sum of \$6,392.42, paid in by the David W. Beaty estate, which is non-resident. This, too, was paid under protest. And on the 30th of December, 1925, this protest was lifted and this sum of \$6,392.42 was paid into the State Treasury, as evidenced by the Treasurer's receipt, No. 1628.

Q. What was the next one?

A. On January 1st—on January 30, 1926, we received a check in the sum of—really, we received two checks, totaling the sum of \$1,362.67, paid in by the Margaret and Elizabeth Griffith estates. This sum was deposited, as evidenced by the record in the Austin National Bank, on January 30, 1926. This was paid under protest. On March 20, 1926, we received a check for \$4,195.86, paid in by the estate of William O. Allison, a non-resident estate. This sum was deposited in the Austin National Bank, as evidenced by the records of that bank, on that date.

Q. Now, Mr. McKay, did you receive either of these items when they came into the office?

A. I did not receive—I received these checks.

Q. You received them?

A. I did.

Q. Yes, sir. What became of them?

A. At that time Mr. Woodall was my superior, and he handled those checks, and the record shows they were deposited, as stated, in the Austin National Bank.

Q. Now, after that incident, when was your attention next called to the \$4,195.00 item?

A. I don't know the—I can't recall the exact date.

Q. About when?

A. But it was in January of this year.

Q. By whom was your attention called?

A. By the State Auditor.

Q. Did he make a request of you with reference to that item?

A. He came to my desk and asked to see the file in the W. O. Allison estate.

Q. Did he ask you to make a search with reference to the other files?

A. He did. I first gave him the W. O. Allison estate, and then he asked if I had any others.

Q. Any other files?

A. Files where sums were put in in escrow—

Q. Was the Allison tax an escrow tax?

A. It was.

Q. A protested tax?

A. It was.

Q. Now, where did you find the Allison file?

A. I am not sure whether I got it out of the retired file; I think that I did.

Q. What do you mean by "retired file"?

A. When the tax is paid and a permit is issued for the transfer of the holdings upon which the tax was assessed, that estate then goes to our retired docket.

Q. As closed?

A. As closed.

Q. Now, can you explain how these got into that?

A. I don't keep the files myself, but I can explain why the filing clerk, the lady who handles the files, would place the estate where all the correspondence was, that the tax had been paid and the permit with the transfer stuck to it, it would naturally stand to reason that the girl would assume that the matter was closed. But I didn't enter any of those items on the ledger kept in the office for that purpose until the money was deposited in the State Treasury; therefore, this estate did not appear on that list.

Q. Did Mr. Lynn ask you to make further search for the other files?

A. He did.

Q. Did you find any other files?

A. I found the files just mentioned—that I have just mentioned.

Q. Did you find the Griffith file of \$1,362.00—the \$1,362.00 file?

A. I did.

Q. Did you give Mr. Lynn the names of these files you have here, of these estates?

A. I gave him a list of those estates, the amount involved and all data disclosed by the files.

Q. Did he have this information before he made his supplemental report?

A. He had all of this information prior to the filing of his supplemental report.

Q. Will you give me—did he leave out any information that you have given him?

A. He seems to have only included in the supplemental report the Allison estate and the Griffith estate.

Q. What estates did he leave out?

A. He left out the Allen estate of \$957.00, the Meisner estate of \$4,043.96, the Herman estate of \$3,909.04, and the Beaty estate of \$6,392.42.

Q. Total of how much?

A. \$15,332.81.

Q. What investigation did you make to determine the disposition of these Allison and Griffith funds if any?

A. When these matters were called to my attention, I first looked on my register—ledger, rather—to see if they had been entered, and then looked through the last deposit slips that we used, and I found no record of it; I then looked through the bookkeeping department—neither did I find any record there of where those funds had been deposited with the State Treasurer. I then took the matter up with Mr. Terrell and asked him if he knew what disposition had been made of these sums.

Q. Go ahead. What did you learn from him?

A. Mr. Terrell told me that he did not handle the accounts, funds that were placed in escrow, personally.

Q. Did he know anything about those items?

A. He did not—stated that he did not.

Q. Now, when an escrow item, or a protested item, is deposited, just state how it is released, what becomes of it—if it goes to the State, how it goes; if it goes back to the party or is refunded, how it goes?

A. It is my understanding, and I have had that question up, that when money is paid in under protest, that the money should remain on deposit under the rules until the protest is lifted, either by request of the party paying the tax or by some court decision determining to whom the money belongs.

Q. Did you discuss these items with counsel for the State?

A. The counsel for the Committee examined me in this case, and I appeared before the Committee several days ago.

Q. Did you take with you the files of those estates?

A. The subpoena that was served on me requested that I bring with me the Allison and Griffith files, and I had both of those matters, and I also took with me the other four files where the money had been placed in escrow.

Q. Did you tell the Committee, in the presence of the State Auditor, that the Auditor had examined each of those files and had the information as to the disposition of those funds before filing his supplemental report?

A. I did.

Q. Did the Auditor deny it?

A. He did not.

Mr. Storey of Wilbarger: Mr. Chairman, while he is waiting, I just want to ask one question. Mr. McKay, you said that the State Auditor omitted four of these estates and included two in the report. Now, what I want to know is this: Whether or not these four that were omitted, did they involve escrow deposits?

A. Yes, sir, to the total of \$15,332.81.

Q. Now, who collects the resident estate taxes?

A. The local tax collector of the county in which the estate is filed.

Q. The local tax collector. To whom does he remit?

A. The statute requires that he make his remittance direct to the Treasurer.

Mr. McGregor: Take the witness.

Cross-Examination.

Questions by Mr. Stevenson:

Q. Mr. McKay, you say you are the auditor of the inheritance tax desk in the Comptroller's Department?

A. I am.

Q. As auditor, it would become your duty to see that funds referred for that desk were promptly cleared, wouldn't it?

A. My duty there does not extend that far.

Q. Who is charged with that duty?

A. I assume that the Comptroller is charged with that duty.

Q. That would be Mr. Terrell—S. H. Terrell. Now, you say that you have had six estates paid under protest during your tenure of office?

A. That is correct.

Q. Those six have been detailed by you this morning, haven't they?

A. Yes, sir.

Q. You say that four of them have been cleared either into the Treasury or paid back to the persons paying them, is that right?

A. Correct.

Q. The total of those four that have

been cleared amounts to \$15,332.00, you said?

A. And 81 cents.

Q. Eighty-one cents. Three of those went into the Treasury and one was returned, is that right?

A. I believe that is correct; no, that is not correct.

Q. All right; let's get it?

A. The Allen estate was refunded, the Meisner estate was refunded, the Herman and Beaty estates were paid into the Treasury, with the exception of \$30.39 out of the Herman estate, which was refunded.

Q. I see. Well, that is where I got the three items, part of that was refunded. Now, then, to be clear about it, two of those estates were refunded in toto, were they?

A. Yes, sir.

Q. And two of them paid into the Treasury, and then on one of them paid into the Treasury a small portion was returned?

A. Correct.

Q. Now, the total of that is fifteen thousand and some-odd dollars?

A. Yes, sir.

Q. \$15,332.81?

A. Yes, sir.

Q. Mr. McKay, there were only two other estates, now, that were paid under protest, weren't there?

A. That is all our records disclosed—two estates.

Q. That is all your records disclosed. Only six estates during the time you have been in office?

A. Correct.

Q. And of those, one-third of them have never been accounted for, have they?

A. They had not at that time.

Q. Yes, sir, that is what I mean—at that time; that is, the Allison, \$4,195.86, and the Griffith estate, \$1,362.00?

A. Correct.

Q. You say it was not your duty to audit these accounts?

A. I did audit these accounts and computed the tax.

Q. Yes, sir; but I mean to audit the disposition of those funds?

A. No, sir.

Q. As to whether they had been cleared or not?

A. No, I didn't handle any of the funds, and I want to make this statement, of course, about my understanding—

Q. Yes, sir?

A. That in the two estates that were refunded, and in the two estates where

the money was transferred to the Treasury, in each instance the file discloses a letter lifting the protest, upon which these taxes were paid. Well, the record in the Allison and Griffith estates does not disclose such evidence.

Q. Yes, sir, the record does not disclose that it had been lifted, does it?

A. No.

Q. Had you ever been served with any process showing that this was taken into the courts for determination?

A. I have with me what I believe would be a better record.

Q. Well, does it disclose any such action?

A. In one instance they advised that the estate was in litigation, and in the other they paid the tax under protest for the reason that they objected to my computation of the tax.

Q. They objected to your computation of the tax? Now, which estate was that? Well, you remember generally, I just want your recollection generally?

A. Well, I want to be sure.

Q. All right.

A. Because I might get those two mixed, you see (referring to papers). Do you care for this communication to be read (handing paper to counsel)?

Q. No, sir; I will be glad to have you read it.

Mr. Petsch: Of what estate?

(Mr. Stevenson passed the paper to the Reading Clerk, who read same, as follows):

State of New Jersey,

Office of

District Supervisor and Appraiser,
Transfer Inheritance Tax.

Bergen County,

Court House, Hackensack.

District Supervisor, James D. Moore,
Fort Lee, N. J.

Phone, Hackensack 1662, Fort Lee 66.

February 25th, 1926.

Hon. S. H. Terrell, Comptroller, Austin,
Texas.

Dear Sir: Enclosed please find check in the amount of \$4,195.86 in payment of tax assessed in re estate William O. Allison, deceased, late of Englewood Cliffs, New Jersey.

We beg to advise you herewith that the distribution of the residuary estate is being contested in the Court of Chancery in the State of New Jersey, on the ground that the heirs-at-law, a widow and three children, should share instead of the beneficiary named. If this con-

test is successful, we shall pray relief in this matter.

Will you please forward the receipt and waivers to me at the Court House, Hackensack, N. J.?

Very respectfully yours,

G JAMES D. MOORE.
Enclosure.

(The following letter was also introduced and received in evidence, and marked "Exhibit 82.")

March 1, 1926.

Hon. James D. Moore, Court House,
Hackensack, N. J.

In the matter of the estate of William O. Allison:

Dear Sir: This will acknowledge receipt of check in the sum of \$4,195.86 in payment of inheritance tax assessed against the above estate, for which I thank you.

I note that you advised that this estate is now in litigation, and in event the result should change the beneficiaries that you will ask relief in this matter. Therefore, this is to advise that I am placing this sum in escrow to be held for a reasonable length of time, awaiting further advice in the matter.

I am also enclosing herewith permit for the transfer of stocks and bonds held by the above estate as reported in original affidavit of executors.

Yours very truly,
Comptroller.

JMcK:AE
Encl.

Q. Mr. McKay, this was the letter which tendered the remittance, wasn't it?

A. I believe that it is—correct.

Q. That letter is dated the 25th of February, 1926, isn't it?

A. Yes, sir.

Q. That money was not deposited in the Austin National Bank until March 20, 1926, was it?

A. We have the record of the Austin National Bank.

Q. Now, what was being done with that money during that month?

A. I couldn't tell you; I couldn't answer that question for the reason that I didn't handle either of those checks. Mr. Woodall was then my superior; he had charge of it.

Q. Did you see the checks when they came in?

A. I did.

Q. They came to your desk, didn't they?

A. They did. I answered the communication, acknowledged receipt of it.

Q. Yes, sir. And you simply turned the checks over to Mr. Woodall?

A. Correct.

Q. Now, I believe you testified that a record was kept of money collected, checks held in escrow?

A. In my division?

Q. Well, who kept that record?

A. I made no inquiry; I had no occasion to make any inquiry as to who at that time handled these accounts. At that time I was a subordinate in that division.

Q. Didn't you have any record by which you could audit these accounts?

A. You could audit these accounts from the files, that was the only record that I know of by which they could be audited, until after they had been passed to the State Treasury.

Q. You mean to say there was no record kept in permanent form of any of the moneys put in to be held in escrow in the inheritance tax department?

A. I say we have never at any time had, to my knowledge, any such record in that division.

Q. If one of these files were to disappear, it would make a serious difficulty with you in making an audit, wouldn't it?

A. Well, I rather think it would.

Q. You had no other record except the file itself?

A. That is all.

Q. And there were only six of those that came through your desk, and of those six two have never been accounted for, have they?

A. They had not up to that time.

Q. Up to that time? Now, what was the reason, you say, the Griffith estate was protested? This paragraph you have marked, I suppose, is the only one that refers to that, is it?

A. The only one.

Q. And that reads as follows: "We protest, however, against your computation of the inheritance tax due from this decedent's estate"—that is right, isn't it?

A. So far as I know, that is correct; yes, sir.

Q. Yes, sir. Now, that was the only protest made, was it?

A. The only protest as far as I know.

Q. Did you receive that letter (showing witness a letter)?

A. I assume that I did, because the file discloses that I answered it.

Q. Yes, sir.

A. I either received it or it was laid on my desk for reply.

Q. Did you receive the remittance?

A. Why, I couldn't testify that I received the remittance, because it is possible that it might have been received by Mr. Woodall and placed on my desk for reply. I did reply to that letter and acknowledged receipt of the check.

Q. Can you tell from your records the day you received that check?

A. I could tell from my records the day I acknowledged receipt of it.

Q. Yes, sir?

A. (Handing counsel a paper.)

Q. You acknowledged receipt of it on January 25th—that is the date of this letter, isn't it?

A. Correct.

Q. And the check was not deposited in the Austin National Bank until January 30, isn't that right?

A. Correct.

Q. What was being done with the check in the meantime, do you know?

A. I couldn't tell you.

Q. Both of these were dated in the year 1926; now, one on January 30, when the deposit was made, and the other one on March 20, isn't that true?

A. Correct.

Q. And no payment of any other of them was made in the State Treasury until January 27, 1930?

A. I believe that is the date, January 27, 1930.

Q. Yes, sir. Mr. McKay, you spoke a moment ago of asking Mr. Terrell if he knew anything about these two amounts of these estates; you testified that?

A. Yes, sir.

Q. What did he tell you?

A. He told me that he had not handled anything—had not handled those accounts with the funds in escrow, the banks in which the funds in escrow had been deposited.

Q. Did he tell you in this conversation that they had been traced into his account in the Austin National Bank?

A. No, he didn't tell me that at that time.

Q. Did he tell you that later?

A. We had a report from the Auditor which showed that they had been deposited in the Austin National Bank.

Q. You had seen the Auditor's report, then, had you, at that time?

A. I believe that he furnished—first furnished the Comptroller with a statement before he filed the original report.

Q. He furnished the Comptroller with a statement, did he?

A. These items, the items of these two accounts.

Q. Yes, sir. That is true, then, that he did furnish the Comptroller information to this effect before he made any report to the Legislature, didn't he?

A. He furnished a statement.

Q. Yes, sir?

A. Pointing out certain items, before he filed his original report.

Q. And asking for further information with reference to them, didn't he?

A. I believe that Mr. Terrell would probably be a better witness on that point.

Q. Well, didn't he ask that information of you, weren't you present when he was there, haven't you testified here a moment ago that you brought out these files of the Allison estate and the Griffith estate and showed them to the Auditor?

A. I did.

Q. Well, didn't he request all the information of you then as to the disposition of these receipts?

A. He did. But Mr. Terrell wasn't present when the Auditor made that request.

Q. All right, he requested it of you, didn't he?

A. He did.

Q. You were not able to show him any of those cancelled checks—and that is part of this Austin National Bank account, were you?

A. I was not.

Q. You didn't keep this account, did you?

A. I did not.

Q. Did you ever receive any statements from the Austin National Bank or the Texas Bank & Trust Company?

A. I never received any statement.

Q. You didn't check on either of these accounts, did you?

A. I never received checks or gave them.

Q. On either of them, did you?

A. On either of those or any other.

Q. Do you know any other employe in the Comptroller's office who did check on these bank accounts except Mr. Terrell?

A. Of my own personal knowledge, I don't.

Q. No, sir. Now, then, getting to that point that we were just discussing—the Auditor did request information of Mr. Terrell and of you?

A. He did of me.

Q. Yes, sir. And he furnished you a statement in advance?

A. Yes, sir.

Q. Now, you mentioned a while ago to Senator McGregor that the Auditor

did not report these other four estate items. What did you mean by that, Mr. McKay?

A. I mean that when the Auditor filed—there was a supplemental report, he stated there were approximately \$54,000.00 of funds that had been deposited in the Texas Bank & Trust Company and in the Austin National Bank that had not been accounted for, when, in fact, he knew that \$15,532.81 from the Inheritance Tax Division had been accounted for.

Q. Well, now, haven't you just stated that you did not furnish him any cancelled checks and did not show him any evidences of the disbursements of that account?

A. No, I didn't make the statement in that way.

Q. Well, what statement did you make?

A. I stated the Auditor had before him the information contained in each of those files, he had before him the deposit warrant number of the State Treasurer, showing that these moneys had been transferred to the State Treasury, in this account; then they went to the Bookkeeping Department to verify those numbers, and they had these deposit receipts from the Treasurer to look up, each one of these deposit slips.

Q. That is with reference to those four estates that you have already mentioned?

A. Yes, sir; and I saw the ones you refer to.

Q. But answering my original question, you did not disclose the bank statements that these funds had come from?

A. I did not have it.

Q. You do not know of any other employe in the Comptroller's office who ever furnished the Auditor with any of these bank statements?

A. Personally, I do not.

Q. Now, with reference to the deposit of \$5883 on January 27, when that money was deposited in the Treasury, did it come out of the Austin National Bank account?

A. I do not think so. Mr. Terrell told me that this money belonged to the State. Then Mr. Terrell brought some cashier's checks to my desk, covering these two accounts—amounts, and I passed them in the ordinary way of transacting this business to Miss Willman, who receipted for them and deposited them in the Treasury.

Q. How many cashier's checks were there?

A. There were two.

Q. What was the amount of them?

A. One was for \$4195.86—

Q. That was for the Allison estate?
A. Yes, sir; and the other was for \$1362.67.

Q. That was for the Griffith estate?

A. Yes, sir.

Q. From what bank were those checks drawn?

A. I declare, I can not answer that question.

Q. What was the date on those special checks?

A. I am not sure about that, but it must have been about January 27.

Q. The same day on which the deposit was made?

A. I cannot say whether Miss Willman turned the checks in that day or the next.

Q. Do you know where the money came from for the purchase of those checks?

A. To my own personal knowledge, I only know where part of it came from.

Q. Who did it come from?

A. Ben Grafton, I understand, gave his check for \$750.00; Worth House gave his check for \$300.00 and H. H. Connor gave his check for \$500.00.

Q. Well, go on. Did not Mr. Powell give his check for \$250.00?

A. Well, I believe he did, but I do not think that Mr. Powell ever told me so himself.

Q. But you have information that he did?

A. Yes, sir.

Q. Where did the other come from?

A. Personally, I do not know, but in a general way, I think that he borrowed it from some of his friends.

Q. Who borrowed it—Mr. S. H. Terrell?

A. I assume that he did.

Q. Is it not a fact that he told you he did?

A. That is true. Some of his friends made up this amount.

Q. That is, his friends made up \$4,000.00, is that right?

A. More than that.

Q. But of that amount \$750.00 was Mr. Grafton's check, \$500.00 was Mr. Connor's check; that would be \$1,250.00, and the \$250.00 contributed by the check of Mr. Powell would be \$1,500.00, and Mr. House's check for \$300.00, that would make \$1,800.00; that would leave \$4,083.00 or approximately \$4,100.00 that was made up by other means, would it not?

A. Yes, sir.

Q. I will ask you if this is not true—that that was taken down to the bank and was comprised of forty-one one hundred dollar bills?

A. I will state that I never saw a

dollar of the money personally. I will further state that I did not go to the bank and do not know who did go.

Q. I will ask you if Mr. Terrell has not told you that that is a fact?

A. No, sir; he has not.

Q. He did not tell you that part of it, then?

A. He did not.

Q. No, sir. At any rate, to make the matter clear to the House, the amount due the Allison estate of \$4,195.00 and the amount owing on account of the Griffith estate of \$1,362.00 were both deposited in the Austin National Bank and the reimbursement to the Treasurer did not come out of that bank. Is that true?

A. You mean the original amount?

Q. The original amount.

A. I am quite sure it did not come out of that bank.

Q. But both amounts were deposited in that bank?

A. Both amounts were originally deposited in the Austin National Bank.

Q. And approximately four years before they were turned into the Treasury?

A. That is the record.

Q. Did you take any receipts for these cashier's checks?

A. From whom?

Q. Well, from any one at the time they were delivered to you and were by you delivered to the Treasurer or to some one and by them to the Treasurer—these are the Comptroller's reports, are they not?

A. They are the Treasurer's receipts.

Q. They are issued by the Treasurer but to the Comptroller, is that right?

A. Yes, sir.

Q. Mr. McKay, you have seen the State Auditor's supplemental report as of January 29?

A. Yes, sir. I have read the report but may not have gone through it carefully.

Q. Well, this is a copy of it, is it not?

A. Yes, sir.

Q. I will ask you if on page 21, there is not a statement of the escrow account: "Money collected—held in escrow"?

A. Yes, sir, and this appears on the statement.

Q. And upon that statement there does not appear either of these items you are testifying about?

A. No, sir.

Q. I will ask you if there does not appear in that report an exhibit of the Austin National Bank account or what purports to be such an exhibit?

A. Correct.

Q. I will ask you if that account does not contain either deposit of these four inheritance tax amounts that you have mentioned, besides the Allison and Griffith estates?

A. They do.

Q. They are there, then, are they not?

A. That is true. But that report does not disclose the disposition of those funds.

Q. No, sir, it does not. You have seen the audit made by J. A. Phillips at Mr. Terrell's suggestion, haven't you?

A. Yes, sir.

Q. That is it?

A. Copy of it.

Q. I will ask you if it does not show the same items as incorporated in the report of the State Auditor?

A. It shows them item by item.

Q. And the statement relative to those accounts made by the State Auditor was true as shown by the audit made by Mr. Phillips for Mr. Terrell?

A. As to the deposits of these items they both agree on that.

Mr. Stevenson: That is all. You can take the witness.

Cross Examination.

By Mr. McGregor:

Mr. McGregor: Mr. McKay, you state that they did not show the disposition of this money. These auditors did not show the disposition of these four estates. What do you mean by that?

A. The auditors show where they were deposited, but I have not been able to find where they show any disposition.

Q. And your testimony shows the disposition of these amounts?

A. My testimony is and the file discloses the disposition of the funds in those four estates, shows the deposit warrant number of the funds that went into the Treasury and the receipts acknowledging the funds that were returned to the taxpayer.

Redirect Examination.

By Mr. Stevenson:

Mr. Stevenson: I do not want to leave the House in confusion as to what you mean by your testimony. I want you to examine this page and see if every item you have testified to is not shown as a check or deposit against that account?

A. I think those items show a debit but in his summary or his general statement, he made the statement of \$54,000.00 that had not been accounted for without mentioning those items.

Q. Did not he state that was with reference to some large sums and did not he say that same had not been satisfactorily accounted for?

A. I so understood same.

Q. Is it not true that he had no records to go by to try to analyze this Austin National Bank account?

A. My understanding is that he had no records other than in the Austin National Bank.

Recross Examination.

By Mr. McGregor:

Mr. McGregor: Mr. McKay, Mr. Stevenson showed that the checks were received one day and the receipts for the amounts show a different date to the date on which these checks were deposited. When a check is deposited for collection it would not be entered in the books of the bank until the money was paid, would it?

A. You will have to ask the bank about that.

Mr. Stevenson: That is all, Mr. McKay.

Mr. McGregor: That is all, Mr. McKay.

The Chairman: Who will you have for your next witness, gentlemen?

Mr. McGregor: Call Mr. F. B. Hardeman.

Whereupon, F. B. Hardeman being duly sworn by the chairman testified as follows on

Direct Examination.

By Mr. Keeling:

Mr. Keeling: Please state your name, age and place of residence.

A. F. B. Hardeman, forty-nine years old, and I live in Austin, Texas.

Q. State your place of business.

A. State Comptroller's Department.

Q. What are your duties there?

A. My title is Financial Statistician. My duties are to compile the records, preparing the reports to the Governor, and the Legislature or anyone else who may request.

Q. State how long you have been employed in the Comptroller's office?

A. Nine years, the 19th day of last January.

Q. In the same capacity in which you are now working?

A. No, sir.

Q. State the various positions you have held in that department?

A. I was employed in January, 1921, as Occupation Tax Collector and Auditor.

Q. State the duties that are now devolved upon you in that department?

A. I compile the data requested by the Governor or the Legislature and also make up a monthly statement and the annual report each year.

Q. Have you performed that duty?

A. Yes, sir.

Q. Is there any difference in the manner in which you have performed that duty under Mr. Terrell and the manner in which you performed that duty under other Comptrollers?

A. None whatever.

Q. Was it your duty to prepare—part of your duties to prepare the annual statement of the Comptroller?

A. Yes sir.

Q. Have you before you now the last annual statement of the Comptroller?

A. I have the one for 1928.

Q. Have you the annual statement for several years preceding 1928?

A. I have.

Mr. Keeling: We now will offer in evidence the annual report for five years next preceding this investigation, not to be read in evidence but to be marked as exhibits and filed and not to be copied into the record but to be used for reference purposes only. Will you hand me the annual report for 1924?

A. Yes, sir.

Q. Was this report made to Honorable Lon A. Smith, Comptroller?

A. It was.

Q. Does this report show by whom it was prepared in the Comptroller's Department?

A. It does.

Q. State the name of the person shown to have prepared that report?

A. Charles N. McClendon.

Q. I will ask you if this is the same Charles N. McClendon who has been acting in the office and around the office of the State Auditor?

A. It is.

Mr. Keeling: I desire at this juncture to read the letter of transmittal in the report. I will ask the Reading Clerk to read it.

Whereupon, the Reading Clerk read the letter of transmittal above referred to which is as follows:

Statement of Statistician.

Austin, Texas, November 1, 1924.

Hon. Lon A. Smith, Comptroller of Public Accounts.

Dear Sir: The statistical tables immediately following this statement contain summaries showing the percentages that each class of receipt or disburse-

ment bears to the total receipts or disbursements.

These summaries are followed by tables showing in detail the various receipts or disbursements that go to make up the different classes or groups. The detailed statements follow in exactly the same order as the various group totals appear in the summaries.

It must be borne in mind that in classifying these disbursements only actual warrants issued are considered. Encumbrances in addition to outstanding warrants, such as incompleting contracts or unused appropriations, are not shown in connection with the fund accounts.

Table No. 69 shows the condition of the general revenue fund after consideration of the cash on hand and the actual warrants outstanding; and, in addition to this, shows the other encumbrances in the way of outstanding appropriations.

These tables are not considered to be perfect in either form or content; but, in an accounting system where receipts and disbursements are classified more by departments than by the actual sources of the receipts or the functions of the disbursements, they will serve to convey more information than has previously been available in this report.

Respectfully,

CHARLES N. McCLENDON,
Financial Statistician,
Comptroller's Department.

Q. I will ask you if you have prepared the same subject-matter that entered into the report of 1924, and the same subject matter that has entered into each annual report thereafter?

A. I have.

Q. I will ask you if it is substantially the same data each year?

A. It is.

Q. The basis for making the report in 1924 and each succeeding year is substantially the same?

A. Yes, sir.

Mr. Keeling: You may take the witness.

Mr. Stevenson: Yes, sir.

Cross Examination.

By Mr. Stevenson:

Mr. Stevenson: You have mentioned six annual reports, is it six or seven?

A. Five annual reports of the Comptroller's office.

Q. Is there anything in any of those reports which shows what S. H. Terrell has done with these amounts of money which are unaccounted for?

A. There is not.

Q. So far as you know, those reports have no bearing on this inquiry?

A. None whatever.

Mr. Stevenson: That is all.

The Chairman: Call your next witness, please.

Mr. Keeling: We want Mr. Robison—J. T. Robison.

Whereupon, J. T. Robison, a witness for the respondent, being duly sworn by the chairman, testified as follows, on

Direct Examination.

By Mr. Keeling:

Mr. Keeling: Please state your name and place of business.

A. My name is J. T. Robison—known as Kit Robison. I am employed in the Comptroller's Department as chief warrant clerk.

Q. How long and in what capacity have you had employment in the State Comptroller's office?

A. I was employed first September 1, 1915, as warrant clerk in the sheriffs' department first, later as chief warrant clerk and for the last two and a half years as general warrant clerk.

Q. You are, at present, the general warrant clerk for Comptroller S. H. Terrell?

A. I am.

Q. Will you state the nature of your duties there?

A. My duties are to examine and audit and approve for the issuance of warrants all accounts drawn on the general revenue.

Q. Throughout the State of Texas?

A. Yes, sir. For all the departments, State institutions, and State schools.

Q. It is needless to say that this constitutes a great number of warrants?

A. Out of the general revenue, we drew last year almost one hundred thousand warrants.

Q. Will you state the system used in that department for keeping these warrants so that they can thereafter be referred to?

A. Accounts, of course, are kept against each appropriation made by the Legislature. Each appropriation has a number and every account drawn against that appropriation is entered by the bookkeeper and bookkeeping machine against the appropriation. We also have a numerical list of all claims filed, approved on which warrants are issued. A numerical list covers, of course, warrant number, and is kept in the order warrant numbers are issued.

Q. Do you have an alphabetical list of warrants?

A. No such list is kept for the general revenue.

Q. Was there ever, in the history of this State, so far as you know, such list kept at any time?

A. When I was subpoenaed to appear as a witness here, my subpoena called for the production here with me before the committee of an alphabetical list of the claims. We did not keep an alphabetical list, and, of course, I could not bring that list to the committee. I went back in the records as far as 1840 and I could not find an alphabetical list of claims at any time. The law, as I understand, calling for the keeping of this list was passed in the year 1910. Since then, we have had six Comptrollers, and at no time have any of them kept, so far as the records show, an alphabetical list of claims.

Q. I will ask you if it would take more employes to keep an alphabetical list than the numerical list that you are now keeping?

A. Certainly. The alphabetical list would require in keeping general revenue warrants at least three more clerks than we now employ, and would only be a duplication of the work. In the Highway Department warrants the employment of five or six and possibly more clerks to handle the warrants and keep an alphabetical list in addition to the numerical list now kept.

Q. Has the Legislature ever provided employes sufficient to keep an alphabetical list of the sundry claims on the general revenue of the State of Texas?

A. They have not at any time, and they do not at this time, have a sufficient number and have not been at any time since I have been there as chief warrant clerk.

Q. I will ask you if the system you have now, or the system you employ at this time, is a practical system and enables you to secure the information that may be desired about these various claims?

A. The system now used seems to be very practicable for all purposes. We have no trouble in locating warrants that are lost and giving the items and information that is called for about the accounts, or the warrants which have been issued.

Q. With reference to the approval of the Comptroller's accounts by the Secretary of State, I will ask you what the practice is at this time in your department?

A. I do not handle warrants and

claims that go to the Secretary of State's office.

Q. With reference to your own claims, have you recently had occasion to have a conference with the Secretary of State with reference to working out a system by which the Secretary of State shall approve the claims of the Comptroller?

A. During the latter part of last month, I was called on by Mr. Terrell to confer with the Secretary of State relative to her approval of our warrants for payroll for the month of January, and also the approval of a few traveling expense accounts. We could not agree on the form of the affidavits that the Secretary of State demanded and required of the Comptroller.

Q. Was there ever a time before this presentation of the last accounts that the Secretary of State was called upon to approve the accounts of the State Comptroller?

A. Not that I know of.

Q. Did the Secretary of State furnish you with a statement of the affidavits that would be required to authenticate your claims against the State for your expense accounts?

A. The Secretary of State furnished Mr. Terrell with a list of requirements that they expected to be met by Mr. Terrell, enclosing a number of affidavits, and Mr. Terrell sent me to the Secretary of State's office with this matter. I objected for Mr. Terrell to the whole proceeding. Particularly to the unnecessary affidavits, as I thought them unnecessary.

Q. You have seen them, that list of requirements made by the Secretary of State?

A. Yes, sir.

Q. I will ask you if you, in good faith, attempted to work out a basis of operation with the Secretary of State?

A. I asked the Secretary of State to be reasonable in fixing or preparing the affidavits or information that the Comptroller would be required by her to make, and attempted to reach an agreement with her, but at the time nothing was done and was postponed until the present month. Nothing has been done up to date, except to furnish the Comptroller with the affidavits that he is required to attach to his accounts when such accounts are transmitted to the Secretary of State for approval.

Q. Have you a copy of the requirements?

A. I do not have it with me. I have it on my desk.

Mr. Keeling: We desire to introduce

those requirements in evidence. Can you send some one to your desk to get the copies or go yourself?

A. Yes, sir.

Mr. Keeling: Mr. Chairman, would it be agreeable for the witness to be excused long enough to get these documents from his desk, as I think that would facilitate the proceedings. Counsel for the House have agreed that he may go to his desk for these documents.

The Chairman: That is all right.

Whereupon, the witness left the stand and went to his desk after the documents referred to.

Mr. Woodruff: I move that the committee rise, report progress and ask leave of the House to sit again at 1:30.

The Chairman: The gentleman from Wise moves that the committee rise, report progress and ask leave of the House to sit again at 1:30.

Whereupon, the question was taken, and the motion prevailed.

The Chairman: As chairman of the Committee of the Whole, I report that the committee has arisen, reported progress and asked leave of the House to sit again at 1:30. Is there any objection? The Chair hears none, and the Committee of the Whole will stand recessed until 1:30.

The Speaker: The House will be in order.

MONDAY, FEBRUARY 24, 1930.

Afternoon Session.

Pursuant to recess of the Committee of the Whole at 11:50 a. m. Monday, February 24, 1930, the Committee of the Whole reconvened at 1:40 p. m. February 24, 1930, with J. T. Robison, witness in behalf of the respondent, on the stand.

By Mr. Keeling:

Q. Mr. Robison, at the hour of adjournment you were asked to examine your files at your desk for the purpose of obtaining, if possible, the copy of the form of affidavit and other requirements by the Secretary of State necessary and incident to the approval of the Comptroller's account before the same could be paid by the Treasurer of the State of Texas. Do you have that document now?

A. I have.

Mr. Keeling: I will ask the reading clerk to read the documents required by the Secretary of State, together with the enclosures there contained. Just read the entire file.

The documents referred to were thereupon received in evidence and were read

by the reading clerk, being identified as Exhibit 84, Exhibit 85 and Exhibit 86, and are as follows:

Exhibit 84:

Department of State,
State of Texas,
Austin, Texas.

January 29, 1930.

Hon. Sam Houston Terrell, Comptroller
of Public Accounts, Austin, Texas.

Dear Mr. Terrell: In an opinion dated December 18, 1917, the Attorney General holds that the accounts of the Comptroller shall not be passed to the State Treasurer until audited by the Secretary of State; and obviously if I am to audit your account it is necessary for me to have the information I am requesting in this letter. So far as can be learned, this statute has never been complied with. Certainly no account of the Comptroller's Department has been approved by the present Secretary of State, either before or after it was passed to the Treasurer.

In sending me your current monthly payroll, you requested that I approve them at once, presumably in order that the employees will not have to wait for their pay, a condition I should regret and hope to avoid.

I can not, of course, approve these or any other payments without some knowledge both of the character of the services performed or purchases made and of the appropriations against which the warrants in payment are to be drawn. This information you will furnish promptly in order that the payroll will not be delayed.

As stated above, it has not been the custom previously for the accounts for your department to be submitted to the Secretary of State for approval. Now that you have begun to do so, it is assumed that you intend to continue the practice. I am, therefore, arranging a small set of accounts to be used in recording and controlling these. The accounts will be opened at once, but I shall not delay these particular payrolls in order to make any entries whatever in them. The information that it will be necessary for me to have before approving this particular payroll, however, can be supplemented in measure and will provide me with all the information I shall need to open these accounts.

This information is as follows:

1. An affidavit signed by both yourself and the State Treasurer showing:

(a) All the appropriations for your department, giving a reference to the acts of the Legislature covering them;

(b) The account numbers and designations by which you officially refer to and describe each;

(c) The unused balances in these appropriations after considering every item of whatever kind or against whatever appropriation it may be drawn for which a warrant or warrants might have been drawn without the approval of this department; and

(d) A statement that the practice of passing the accounts directly to the Treasurer without approval of this office will be discontinued by both your office and the Treasurer's.

This last I regret to have to ask, but you can readily understand that I can not approve any accounts without knowing the balances to the credit of the particular appropriations involved; and, if you should continue to pass your accounts directly to the Treasurer, it will be seen that I could not have knowledge of these balances.

2. An affidavit signed by yourself for each lump sum, bulk or group appropriation, such as M 274, Tax Supervisors and M 307, apparently extra help, showing all persons to be paid from them, the rates of pay and period of work of each.

3. A copy of the voucher or vouchers which are to be approved by me, for my own files. (A photostatic copy of this particular pay roll will be satisfactory in order to save time.)

4. A duplicate sworn invoice supporting each warrant.

5. An affidavit signed by yourself for each separate account that I am requested to approve, as follows:

(a) That the persons to whom payment is made are not indebted to the State;

(b) That at the time the services were performed they held no position of honor, trust or emolument other than the one for which the approvals are requested; and

(c) That, if an employe is to be paid from an appropriation calling for a fixed sum for one employe for one year, no more than one-twelfth of the total sum is included in one month for the particular employe; or, if for a stated number of employes, all to be paid from one total sum, no single employe is to be paid in a single month a sum more than one-twelfth of the amount found after dividing the total sum appropriated by the total number of employes permitted, or, if such be not the case, the conditions surrounding the payment and your authority for making it;

(d) That each of the persons on the payroll has actually performed the par-

particular duties and held the particular positions for which he is being paid and is to receive the amounts for which warrants are to be drawn entirely for his own use without any private agreement or understanding whatever that he is finally to receive other or different amounts; and

(e) That you have passed no account to the Treasurer without the approval of the Secretary of State since whatever date as of which the balances in the appropriation accounts called for in (1) above might be furnished.

6. That you furnish me with a photostatic copy of your December, 1930, payroll in order that I may compare it with the one now submitted.

In respect to these particular payrolls, I am returning them to you without approval so that you may make any needed revision or amendments to them, and I particularly call attention to the fact that the notary public has not shown a date on the certificate submitted by C. D. Watts in connection with an automobile allowance and that the expense accounts submitted by J. K. Johnson and G. F. Railbolt are not accompanied by receipts that vouch for the correctness of the payments.

A copy of this letter is being sent to the State Treasurer in order that he may be fully advised of all these matters.

Trusting that this will result in a satisfactory compliance with the statute, I am,

Very truly yours,
(Signed) JANE Y. McCALLUM.
JYM:S

Exhibit 85:

Department of State,
State of Texas,
Austin, Texas.

February 21, 1930.

Mr. S. H. Terrell, Comptroller of Public Accounts, Building.

Attention Mr. Robison:

My Dear Sir: Enclosed are forms for your use in presenting your account to this office for approval, as required by Article 4345.

In discussing these forms with Mr. Robison yesterday, the suggestion was made by him that items 1 and 5 should be eliminated from the affidavit. Item 1 provides "there is no indebtedness to the State of Texas by the payees shown." We have eliminated from this item indebtedness in the nature of taxes. This requirement is imposed by Article 4350 in the following language:

"No warrant shall be issued to any person indebted to the State."

In connection with this item, Mr. Robison suggested that form 627-b-E367, which is in the form of affidavit presented by a person or company having claim against the State for goods furnished, should contain a statement to the effect that such person was not indebted to the State. This matter was discussed with the State Auditor, who advised that your office had formerly taken the position that the language in the form "that all lawful offsets, payments, and credits had been allowed" was sufficient to cover this point.

Item 5 provides "that no portion of the money to be paid from particular appropriations will be used for any other purposes than that shown by the voucher and for which the appropriations have been made."

Mr. Robison stated that he felt this item was unnecessary because the requirement had already been covered in items 2, 3 and 4. Since this provision is taken from the Appropriation Act, it would appear that the requirement is reasonable, and we prefer that it be met.

Mr. Robison stated that supporting receipts for moneys spent in traveling were not usually furnished by other departments. It would seem to be entirely reasonable for every employee making claim for such expenses to support it with original receipts, and we request that this be done in the future.

Very truly yours,
JANE Y. McCALLUM.
Secretary of State.

JYM:S

Exhibit 86:

On or before presenting accounts to the Secretary of State for approval, kindly furnish this office with a statement showing all the appropriations made for the Comptroller's Department, giving reference to the acts of the Legislature in each case and showing the account numbers and designating by which you officially refer to and describe each. This information may be furnished in the form of a list of the unused balances outstanding against each of the appropriations after considering every charge of whatever kind made to or against these appropriations without the approval of this department.

In order that this statement may be reconciled with the accounts of the Treasurer, kindly advise the last date and last warrant number which your statement includes.

Whenever accounts are submitted for approval, please submit a copy of the voucher or vouchers that can be retained in the Secretary of State's files. Also, in the case of any invoices that are to be paid, please submit in each instance a duplicate invoice fully executed. This should be done in each instance except that, while payments for traveling expenses should be accompanied by supporting receipts, these need not be in duplicate. It will only be necessary to see the originals, and these will be returned to your files.

Some blank forms of affidavits are enclosed and it is requested that one of these be executed and submitted with each account that the Secretary of State is to approve.

Exhibit 86-a.

Affidavit.

To Accompany Payrolls and Pay Vouchers.

I hereby certify that, to the best of my knowledge and belief and as shown by the records of my office, the following are the facts regarding the person or persons to whom payment is to be made in accordance with the attached payroll or voucher dated 193....., totaling \$.....

(1) There is no indebtedness to the State of Texas by the payees shown, unless for taxes.

(2) If payments are for personal services, at the time the services were performed, the person or persons to whom payment is to be made, held no position of honor, trust or emolument other than the one for which payments are directed in the above named voucher or payroll.

(3) The payees shown are to receive the amounts for which the warrants are to be drawn entirely for their own use without any private agreement or understanding whatever that other or different amounts will be finally received.

(4) Each of the persons on the payroll has actually performed the duties and held the particular position for which payment is directed, except as will be stated below.

.....
.....
.....
.....
.....

(5) No portion of the money herein to be paid from particular appropriation will be used for any other purposes than that shown by the voucher

and for which the appropriations have been made.

(6) I have passed no account to the Treasurer without approval of the Secretary of State since (date)....., 193....., the last warrant number being (No.)

.....
State Comptroller of Public
Accounts.

Sworn to and subscribed to before me, this the day of....., A. D. 193....

.....
Notary Public in and for Travis
County, Texas.

Q. Mr. Robison, are all payrolls or expense accounts of the various offices or departments of the State government required to have supporting affidavits?

A. They are.

Q. Are all expense accounts or payrolls of the various departments of the State government required to be approved?

A. State the question again, please.

Q. Are all payrolls and expense accounts by the various departments of the State government required to be approved by the head of the department?

A. Yes, sir.

Q. I will ask you if there is any other department of the State government that is required to have the payroll or expense account authenticated in the manner in which the Secretary of State is requiring that the Comptroller of Public Accounts is required to have his accounts authenticated?

A. Absolutely none.

Q. As an example, for instance, we will take the present State Auditor and Efficiency Expert. Does his account contain the information and data required of the State Comptroller?

A. It does not.

Q. What form of affidavit is required of all other departments of the State government except the State Comptroller?

A. The form of affidavit used generally by all departments is that used by the Land Office for their January payroll, a copy of which I have here.

Mr. Keeling: Will you read just the form of affidavit. We offer the form of affidavit approving the State Land Commissioner's account and payroll for last month.

The affidavit was thereupon received in evidence, marked Exhibit 87, and

was read by the Reading Clerk, as follows:

The State of Texas,
County of Travis.

Before me, the undersigned authority, on this day personally appeared J. H. Walker, Commissioner of the General Land Office of the State of Texas, who being duly sworn on oath deposes and says, that the foregoing payroll of officers and employes of the General Land Office for the month of January, 1930, is correct and that no part of same has been paid out, and that the employes herein named are not related within the third degree of consanguinity or affinity to the head of the department, who has the power in whole or in part to make such appointment.

Q. Is that form used by all of the departments of State government except the Comptroller?

A. Practically all; and the Comptroller has used that form heretofore and up to now.

Q. I will ask you if the Secretary of State advised who prepared the forms she submitted for the Comptroller to adopt?

A. When I asked her, the Secretary of State, who prepared the forms, she declined to give me the information, but Mr. McClendon, of the Auditor's Department, afterwards, in the conference that afternoon, admitted or stated that he prepared, or assisted in the preparation, of these affidavits.

Q. But did Mr. McClendon give to you any explanation why the Comptroller would be required to make a form of affidavit different from any other officer of the State government?

A. His suggestion or explanation was that it was necessary for the protection of the Secretary of State.

Mr. Keeling: I yield the witness to you, gentlemen.

Cross-Examination.

By Mr. Stevenson:

Q. Mr. Robison, I believe you stated that in making your inquiry as to whether this alphabetical list of claims had been kept you went back to 1840?

A. 1846, I believe it was.

Q. You are familiar with the laws with reference to that, are you not, Mr. Robison?

A. With reference to the keeping of an alphabetical list?

Q. Yes, sir.

A. Somewhat, yes.

Q. Don't you know that there was not any law on that question until the

Third Called Session of the Legislature in 1910?

A. That is the first law that I have any knowledge of.

Q. But there has been no statute that to be kept until 1910?

A. Not that I know of, no, sir.

Q. Since that time it has not been kept?

A. As I stated in the beginning, we have had six Comptrollers, beginning with Mr. Lane, and up to Mr. S. H. Terrell, and neither one of them have kept such a list.

Q. And the present Comptroller, S. H. Terrell, does not keep the list either, does he?

A. No, sir.

Q. Now, you stated with reference to having the approval of the Secretary of State, isn't it a fact that the Comptroller is the official vested with the authority to approve accounts of all other departments?

A. Yes, sir.

Q. And the other departments use the form of affidavit prescribed by the Comptroller, do they not?

A. Yes, sir.

Q. Then the Secretary of State is vested with authority to approve the Comptroller's account, is she not?

A. Yes, sir.

Q. And now you say she has prescribed the form of affidavit that is different from the others?

A. Entirely.

Q. That is within her discretion, is it not?

A. I would judge so.

Q. Did you offer any counter form of affidavit?

A. None whatever, only the affidavit similar to the form we use, and she used and attached to her payrolls and accounts.

Q. And the Comptroller makes the approval for the Secretary of State's payroll, does he not?

A. Yes, sir.

Q. And she complies with his request, doesn't she?

A. Yes, sir.

Q. And you refused to comply with hers on the same matter?

A. I did not refuse to comply with it.

Q. I thought you stated that the reason there had been no compliance was that you found it impossible, or something, to comply, wasn't that it?

A. I stated, I believe, that I thought it was impracticable and unreasonable.

Q. You thought it was impracticable and unreasonable?

A. Yes, sir.

Q. As a matter of fact, to make it

clear to the House, you have not complied with the regulation, have you?

A. I have not up to date, but will you let me explain?

Q. Yes.

A. Mrs. McCallum, when the payroll was submitted to her last month, and Mr. McClendon stated that it was necessary for her protection that she have this form of affidavit executed by the Comptroller and attached to his accounts, I asked the question if he thought it was necessary or right for the Comptroller to have all the other departments and institutions and schools attach similar affidavits to their accounts, and he said that would be a matter for the Comptroller himself, that he would have to judge of.

Q. That is exactly as I stated a moment ago, that it is within the discretion of the Comptroller as to the form required by him.

A. I told him at the time that we might, as a matter of precaution, later find it necessary for our protection or for the Comptroller's protection, to adopt similar form of affidavits for other departments and institutions and schools.

Q. In this letter that you had read, written by the Secretary of State, she refers to the fact that the Attorney General construed this back in 1917 and gave an opinion that the Comptroller should secure the approval of the Secretary of State, doesn't she?

A. Yes, sir.

Q. And since that interpretation was given, the law has not been complied with, has it?

A. I do not know. I could not answer that.

Q. I thought you said you had made inquiry, Mr. Robison, and found out if it had?

A. On what point?

Q. On the approval of the Secretary of State to the Comptroller's accounts.

A. Not since I have been in the office that I know of.

Mr. Storey of Wilbarger: Mr. Stevenson, I would like for you to ask the witness the question why the necessity for having a different form from the other State officials. Let him explain that, if he knows.

Q. Do you understand Mr. Storey's question?

A. I believe I understood his question, and I do not believe it is necessary for the Secretary of State to require the form of affidavit and a lot of unreasonable things set out in the affidavit, that the Comptroller does not find necessary to have other depart-

ments and institutions execute or exclude in their affidavit.

Mr. Storey of Wilbarger: One other question I would like for you to ask him, whether or not it was within the power of the Comptroller's Department, who approves vouchers, to have the Secretary of State's office execute similar affidavit with reference to the Secretary of State.

Q. Will you answer Mr. Storey's question?

A. I suppose the Comptroller would have the right to execute any form of affidavit in reason to be executed by other department heads.

Mr. Stevenson: I think he made that clear a while ago, that it is within the discretion of both of these heads of departments to prescribe the form of affidavit which they might require.

Mr. Graves of Erath: If they were to keep the alphabetical list, that would be a duplication of the numerical list, and I am wondering if it would be necessary to keep up the numerical list also if they were keeping up the alphabetical list.

Q. Will you answer Mr. Graves' question?

A. I think it is absolutely necessary to keep the numerical list of all claims filed. An alphabetical list would be merely a duplication of the work, and the cost and help necessary to keep the alphabetical list would be three times that of the numerical list, at least.

Q. Do you think it necessary, Mr. Robison, to keep the numerical list?

A. Yes, sir, practically necessary.

Q. Do you know any other department that does keep it?

A. Other departments, as I understand their system of keeping up with their appropriations, keep a numerical list, or rather a list of warrants issued against their appropriations.

Q. I will ask you if it is not a fact that they also keep an alphabetical list as required by the statute?

A. I don't know that any other department keeps an alphabetical list, no.

Q. Don't you know, as a matter of fact, that the Highway Department issues warrants in large numbers and then keeps the alphabetical list as required by the statute?

A. I do not know that.

Q. I have been asked to ask you this question: what do you consider unreasonable and impracticable in the form of affidavits required by the Secretary of State?

A. Well, when it carries a lot of what I believe to be useless and un-

necessary statements, I think it is impracticable and unreasonable.

Q. What is in that that is useless?

A. If you will give me the form of affidavit required I can show you in one or two instances why it is useless.

Q. I hardly think it necessary unless someone is interested in it.

A. Well, the first is an affidavit signed by the Comptroller and the State Treasurer showing the provisions for the Comptroller's Department and giving a reference to the act covering same. That would be asking of the Comptroller an affidavit to the correctness of the appropriations made by the Legislature, which fact is certified to the Comptroller by the Secretary of State. In other words, the Comptroller would be asked to make an affidavit that the Secretary of State's certification is correct. That is one of them.

Q. Do you want to mention any others?

A. Not necessary, unless the House wishes it.

Q. I guess there is no further request for any more. Mr. Robison, isn't it a fact that this record you have produced here of Mrs. McCallum's requirements has been withdrawn, upon your objection?

A. When I objected to that, in the conference, about the latter part of January, Mrs. McCallum agreed to withdraw that temporarily, with the understanding that she would have time to reach an agreement and prepare a form for the next month, which is this month.

Q. Now, the point that you have made here as a matter of objection is one of those matters that was withdrawn, is it not?

A. I do not believe that is included in the last affidavit, no.

Q. And the last affidavit was prepared in response to your objections, isn't that true?

A. Apparently, yes.

Mr. Stevenson: That is all.

Redirect Examination.

By Mr. Keeling:

Q. Mr. Robison, on the question of the impracticability of the form of authentication submitted by the Secretary of State, I will ask if her form submitted does not require the Comptroller himself to make affidavit that no person on his payroll is indebted to the State of Texas in any sum, unless for taxes?

A. That is required in the last affidavit, yes.

Q. Do you understand why she eliminated taxes?

A. I objected to the entire portion there, and they compromised the matter, or they agreed to make it read, unless for taxes, letting the original stand.

Q. Would these facts called for here naturally be within the knowledge of the Comptroller?

A. I don't see how the Comptroller could be advised covering the indebtedness of an employe of his department, indebtedness to the State, of every employe in his department. That same requirement is asked by the Secretary of State covering miscellaneous or general claims against the Comptroller. He must make affidavit that the parties filing this claim are not indebted to the State.

Mr. Stevenson: The witness may be excused unless there are other questions sought to be asked.

Mr. Prendergast of Harrison: I want to ask is there any rule or statute that authorizes the Treasurer or Comptroller to refuse to pay a man that is indebted to the State?

Q. Will you answer Judge Prendergast's question?

A. I don't think the statute goes that far. The law requires that no warrant shall be issued where the party is indebted to the State.

Mr. Prendergast of Harrison: I don't understand how you get around the Constitution, that you cannot take his wages. If a man is an employe you cannot take his wages?

The Witness: I won't try to explain why the Secretary of State demands this affidavit by the Comptroller.

Q. You say you cannot explain it?

A. No, sir.

The Chairman: The procedure outlined is for the members of the House to reduce their questions to writing, and submit them to the attorneys for both sides, and I think we can make progress by adhering to that rule.

Recross Examination.

By Mr. Stevenson:

Q. When you objected to this particular portion with reference to authentication, did you discuss the matter with Mr. Terrell?

A. I did not.

Q. Did you discuss any of these objections with him?

A. In the beginning, I discussed the entire first letter with him. The last affidavit I have not yet discussed with him.

Q. That provision was in the first letter, was it not?

A. Yes, sir, and he objected to it.

Mr. Stevenson: That is all.

The Chairman: Are you through with this witness?

Mr. Keeling: He may be excused.

The Chairman: Call the next witness.

C. D. Watts was thereupon called as a witness in behalf of the respondent, and having been duly sworn by the Chairman, testified as follows:

By Mr. Keeling:

Q. I believe your name is C. D. Watts.

A. Yes, sir.

Q. State what position you hold with relation to the office of the Comptroller of the State of Texas?

A. I am supervisor of the book work in the accounting division of the department, supervisor of gasoline tax, refund division.

Q. State what your duties are with reference to these matters you have just mentioned?

A. In reference to the keeping of the accounts, I supervise the bookkeeping and the keeping of the accounts as outlined, as has been followed and prescribed by the law. The other work is general supervision of the gasoline refund.

Q. What do you know, if anything, with reference to the control accounts of Texas tax collectors?

A. There is a control account of tax collectors set up and known as tax collectors account.

Q. Did you have any connection with that account?

A. It is the control account to the tax collectors account and to entries that are made to the tax collectors accounts here, control made in totals.

Q. Did you keep or are you concerned in keeping that record you have just been speaking of?

A. I have been keeping it, and I am now supervising it.

Q. I am asking you what its condition is; I mean what are the conditions of your books with reference to that particular subject?

A. The account, the tax collectors account, is not balanced with the tax collectors as a control account; the only one of the accounts on the ledgers that is not balanced with the control account.

Q. Do the books you keep correctly reflect the transactions handled by you and under you?

A. Yes, sir.

Q. Are those books legibly and in-

telligibly kept, and are they in such condition now as to reflect the true condition of those accounts?

A. Yes, sir.

Q. With reference to the securities held by the Treasurer, have you any such account under your supervision?

A. The securities of the several accounts of the State are kept on the ledger accounts in the bookkeeping division.

Q. Do you know whether or not those accounts are properly kept and are in such condition that they reflect the transactions that they deal with?

A. They are.

Mr. Keeling: You may take the witness.

Cross Examination.

By Mr. Stevenson:

Q. Mr. Watts, you say you keep the control accounts, is that right, as required by the statute?

A. I keep all of the accounts, as well as the control accounts, yes, sir.

Q. What control accounts do you keep?

A. I keep the Treasurer's account, the fund control account, the deposit warrants issued account, cash account, redemption of bonds account. I believe those are the control accounts. And all of the fund accounts under the control of those accounts and the source accounts under the control of the deposit warrants issued account are kept in the department by me.

Q. Do you keep the register required by statute covering delinquent and insolvent taxes?

A. No, sir.

Q. You do not keep that?

A. No, sir.

Q. Why don't you keep it?

A. It has never been kept as far back as I could possibly find, and under the present condition it would be an impossibility to do it.

Q. Then the law is wrong in your judgment, is it?

A. No, sir, it is not.

Q. Let me call your attention to this provision in the statute: That the Comptroller shall keep one ledger for current taxes and one ledger for delinquent and insolvent taxes, each to be balanced by means of controlling accounts, in which he shall keep the accounts of the tax collectors.

A. Those accounts are not kept in the bookkeeping division.

Q. They are not kept at all, are they?

A. Not that I know of.

Q. The reason the Comptroller cannot furnish any information on the total amount of delinquent taxes is due to the fact of his failure to keep that record required by the statute, isn't it?

A. Partially so.

Redirect Examination.

By Mr. Keeling:

Q. Mr. Watts, would it be physically possible for you, in addition to the work you now perform, to keep the tax records about which Mr. Stevenson has just inquired?

A. I could not.

Q. Do you have in your department sufficient men to do that work about which Mr. Stevenson has just inquired?

A. We have not.

Q. I will ask you if you know whether or not the recent Legislature was asked to make such appropriation so that they could keep that record, by Mr. Terrell?

A. Yes, sir, it was.

Q. Did the Legislature respond?

A. They did not.

Q. I will ask you how those accounts are kept with reference to the past precedence in the office; I mean the accounts under your charge?

A. During Mr. Terrell's administration there has been a great improvement on the accounts. During his administration and during the time I was on the books there has been a control balance made, which had never been made before as far back as I could learn. Before Mr. Terrell's administration and before my time on the books these control accounts were not set up. Prior to this time the warrants that were issued by the Comptroller were never charged directly to the accounts. A charge was made to the accounts—merely on the statement from the Treasurer as to the amounts he paid. During the time of Mr. Terrell's administration and while I was bookkeeper for him all of the warrants that were issued have been charged directly to the accounts, and there is no recognition, as far as making entries on the books concerned, taken of the Treasurer's reports as to the amount of warrants he paid. Those have been some of the improvements that have been made in the last four or five years in the accounts.

Q. Mr. Watts, if the statutory requirements were strictly complied with, if the Legislature had made sufficient appropriations to put in men there to carry out the requirements of the statutes, I would ask you if you are pre-

pared now to state just what effect that would have; in other words, would it make things different there?

A. Only in connection with the tax collectors account, control account of the tax collectors.

Q. Insofar as you are able to now state, how long has it been since the present method of bookkeeping you are now employing was installed?

A. During the time I have been bookkeeper, which was at the beginning of Mr. Terrell's administration.

Q. Did you find any traces there of a strict compliance with the statutes Mr. Stevenson talks about?

A. No, sir, none at all.

Q. Aren't you mistaken in that regard, Mr. Watts, and wasn't that desk once occupied by Mr. McClendon, the auditor in this case?

A. Yes, sir.

Q. And you undertake to say now that desk does not show that there was strict compliance with the statutes when he occupied it?

A. It does not.

Mr. Keeling: That concludes my examination of this witness. If there are no further questions you may now be excused.

Recross Examination.

By Mr. Stevenson:

Q. Wait a minute. Now wait a minute. Mr. Watts, I want to know if you have any information in your possession about who composed the Texas Tax Refund Company?

A. State your question.

Q. Do you have any information about who composes the Texas Tax Refund Company?

A. Only from what I have heard up here.

Q. Another concern you may have in mind is the Texas Tax Record Company. I am talking about another one, the Texas Tax Refund Company?

A. No, sir.

Q. You don't know anything about that concern?

A. I do not recall it.

Q. Now I wanted to understand you clearly about the request you say you made to the Legislature for an appropriation sufficient to keep this ledger of delinquent and insolvent taxes. Who made that request?

A. That was in Mr. Terrell's budget, and it was assistant bookkeepers for him to use. I had discussed this matter with him, and had talked it, and have exercised every effort I could to bring about this correction, but on account of

the tremendous magnitude of it, which no one who has had no connection with the office can appreciate, and particularly with that department, what is required to bring about such a correction; and Mr. Terrell made the request for additional assistant bookkeepers in order that we could make the attempt. I had discussed these corrections with Mr. McClendon some years ago. It had been on my mind, and it had been my effort these many years to make the correction, if possible. And I went so far as to tell him I was going to see if it was possible for me to make a forced balance and get a starting point to begin this all. He told me that he did not know how I could possibly do it; that he did not see how it could be done until an audit was made of the division, which would take quite a crew of checkers, and a great length of time, and a tremendous expense, to carry that on, to bring it to be so it could be done. But the effort has been before me and I have discussed it frequently with everyone that had any interest in the accounting; made no secret of it, that it was not done. It has been our effort to bring about that correction.

Q. From your speech I take it you think it is necessary that that be done?

A. It is so stated as one of the requirements in the statute.

Q. Now, Mr. Watts, to whom was that appropriation request delivered?

A. Well, that I don't know. That did not come under my handling or anything of the kind. I merely discussed it with Mr. Terrell, to get the appropriation in order that we could make the effort to bring about this correction.

Q. But do you know that Mr. Terrell requested it in his request to the Legislature?

A. Only from what he told me.

Q. You didn't see the request prepared, did you?

A. No, sir.

Q. You don't know whether he made any specific request for that particular item, do you?

A. I do not.

Q. Now I have been requested to ask you this question: If no record is kept of delinquent taxes how do you know when such taxes are paid, and what record is kept of the same?

A. We get that in settling the tax collectors accounts, from the tax collectors annual settlement. It is gotten from there and made of record.

Q. That is, from the several accounts of the State?

A. Yes, sir, and each county settles annually.

Q. The settlement made by each county annually?

A. Yes, sir.

Q. But you have no record of your own to verify the accuracy of that statement, do you?

A. Only what is compiled by the Redemption Division of the Department.

Mr. Prendergast of Harrison: When did McClendon leave the service?

Q. Judge Prendergast asks when Mr. McClendon left the service of the Comptroller's Department?

A. When Mr. Lon Smith went out as Comptroller.

Q. Mr. McClendon was an employe in the department under Mr. Lon Smith?

A. Yes, sir.

Q. Mr. Smith was Comptroller then as Mr. Terrell is now?

A. Yes, sir. I succeeded Mr. McClendon as bookkeeper.

Mr. Keeling: You may stand aside, Mr. Watts.

Pat P. Moulden was thereupon called as a witness in behalf of the respondent, and having been sworn by the chairman, testified as follows:

Direct Examination.

Questions by General Keeling:

Q. Please state your name and the present position you hold?

A. Pat P. Moulden, chief accountant in the Comptroller's Department.

Q. How long have you been connected with the Comptroller's office?

A. Approximately seventeen years.

Q. Has that service been continuous?

A. With the exception of sixteen months.

Q. During whose administration?

A. Began with W. P. Lane, and under every Comptroller since that date, except part of the time with Mr. Lon A. Smith—I was with him part of the time.

Q. What kind of work did you do in the Comptroller's office?

A. The principal work that I do is taking care of the correspondence with reference to inquiries regarding tax matters, and also with reference to, wherever there are complications in accounts, and matters of that kind.

Q. You adjust accounts, do you not, when they are in controversy?

A. Well, to a certain extent I do, yes, sir.

Q. Are you a bookkeeper, or have you been?

A. I have been chief bookkeeper in

a way. However, my line of work has not been the keeping of the books themselves.

Q. Are you familiar with the books?

A. To a certain extent.

Q. Are you familiar with the books in the department in which you work?

A. Yes, sir, fairly so.

Q. I don't mean what all is in the books, but do you know what books are kept there?

A. Oh, yes, sir, in a general way I do; I don't know the details in all of them in every particular, but in a general way I do.

Q. In so far as you are able to state, please inform this Committee whether or not the books are correctly kept so as to reflect the real transactions that are had with that department?

A. They are.

Q. Does that department now, under Mr. Terrell, use, in your opinion, particular diligence in keeping correct books?

A. It does in so far as it is provided with clerks to do so and appropriations to handle the work.

Q. Do you have any particular knowledge with reference to the books as they reflect the control accounts with the tax collectors?

A. Not especially, more than the control accounts,—there is a control account for the—well, I might explain in this way: There is a State general revenue ledger, and a revenue ledger, and a ledger for the account of the tax collectors, there is also the ledger that was mentioned a while ago with reference to delinquent and insolvent taxes; as has been stated from the witness stand there is no ledger with reference to delinquent and insolvent taxes. There have been ledgers kept with reference to the other matters.

Q. And they are now kept?

A. And they are now kept.

Q. During your long experience with the Comptroller's office, I will ask you if in the main its affairs are administered now as they have been discharged during all the years?

A. Practically so.

Q. That applies to the books that are now kept and the accounts that are kept and the manner they are kept?

A. In a general way it does. Of course, there have been some little changes, what might be considered improvements, but in a general way they are kept the same.

General Keeling: You may examine the witness.

Mr. Stevenson: Mr. McGill wants to interrogate this witness a little bit.

Cross Examination.

Questions by Mr. McGill:

Q. Mr. Moulden, a letter of July 9, 1929, written by the tax collector of Brazoria county, was referred to you for an answer, wasn't it?

A. I presume that it was.

Q. I will ask you if the original of that letter there was not referred to you for an answer (showing witness a copy of letter)?

A. (After examining paper.) Well, it is possible that it was, but I don't remember definitely.

Q. I will ask you if you did not write that letter on September 24, 1929, to the tax collector of Brazoria county (showing witness a letter)?

A. Yes, sir.

Q. Now, will you state whether or not this letter of July 9th had been referred to you for answer at the time you wrote this letter of September 24th?

A. Well, I couldn't state positively, but I presume it had.

Q. You presume it had?

A. I can state this, though, that the one written there was not an answer to this here.

Q. Yes, sir? Did you ever write any letter in answer to this letter of July 9, 1929?

A. There was a letter in general written to all the tax collectors along that line, I don't remember just what day, but there was a letter written purporting to cover the information in a general way that was asked for in reference to allowances.

Q. Do you remember when that letter was written?

A. No. If I should see the letter, though, I would recognize it.

Q. I will ask you if that is the letter referring to that specific contract (showing witness letter)?

A. That is not the letter I was referring to.

Q. You wrote that letter, however, did you not?

A. Yes, sir, I wrote this letter.

Q. Is that the only letter that you wrote specifically answering the questions in that letter of July 9, 1929?

A. No, this—no, that is not—not the only letter.

Q. Have you any other letters, or copies of any other letters that you wrote in answer to that letter of July 9, 1929?

A. I wrote a general letter, I don't

know that I wrote one directly or particularly in answer to this one of July 9th, but there was a general letter sent out to all the tax collectors wherein contracts were made, giving information that was to take care of the questions asked of that nature.

Q. Then you think that you did write no specific letter in answer to that request, or reply to that letter of July 9, 1929, until January 14, 1930,—is that right?

A. No, I wrote one before that.

Q. Well, have you a copy of that letter?

A. I don't know that I wrote one just in answer to this particular letter.

Q. Well, that is what I am asking about?

A. Well, I couldn't state that.

Q. You couldn't state that you did?

A. No, sir.

Q. Do you know whether or not the Attorney General has ever approved the contract entered into between San Patricio county and the Texas Tax Record Company?

A. Not that I know of.

Q. You do know, though—did you or the Comptroller authorize the tax collectors to make deductions in the balances under the terms of that contract?

A. I did not.

Q. You did not? Can you tell this committee, Mr. Moulden, why you did not make specific answer to that letter of July 9, 1929, prior to January 14, 1930, if it was referred to you for attention?

A. So far as answering it, I never made a specific answer to that letter at all, but there was another letter that was written giving the general information.

A Member: Get a little closer to the microphone.

A. I say there was another letter, which has not been exhibited to me, that we have a copy of, that I wrote, giving general information on these matters, that I regarded as sufficient to explain, to answer all questions such as contained in this letter here.

Q. You did not regard it necessary to answer specific questions contained in that letter as to whether or not the contract with Brazoria county would be approved?

A. Well, I regard it necessary to answer all letters that you can answer.

Q. Well, I am asking you about this specific letter now. You thought that that did not require a specific answer, is that so?

A. No, I wouldn't say that I thought

it did not require a specific answer; but there are a great many letters right along that line, and there was a general letter prepared and sent out to all tax collectors, as a means of expediting matters and to give information to all of them.

Mr. McGill: Mr. Stevenson, will you examine the witness now?

Questions by Mr. Stevenson:

Q. Mr. Moulden, I believe you stated you were familiar with the books in the Comptroller's office, did you not?

A. Yes, sir, in a general way.

Q. Just in a general way? Are you familiar with the number of employees down there?

A. Well, I know approximately how many there are.

Q. All right; tell that committee how many there are?

A. Well, there is in the neighborhood of sixty, I think.

Q. Sixty employees?

A. However, I haven't kept track of that part of it; it has not been my line of work.

Q. That is your best judgment, though—about sixty employees?

A. I think so.

Q. Yes, sir.

A. In the neighborhood of sixty.

Q. Have you ever seen any record there kept for delinquent and insolvent taxes?

A. There is no balancing ledger kept; there is—there was reference to all delinquent taxes wherein real estate was included; the reports go back to the Redemption Division, and a record of it or of all delinquents is kept back there. However, no balancing ledger, no offset accounts, are kept so as to make a balance of it, so far as insolvency is concerned. We make reports of insolvent collections that are filed away, not entered of record.

Q. I have been requested to ask you this question: Did not the Comptroller's office show in its recent yearly report the amount of delinquent taxes to be in round numbers \$50,000,000—do you know that?

A. I don't know that. That information can be secured from the chief redemption clerk, who is now Mr. Burke, and just what he furnished along that line I couldn't say positively, I haven't looked into it, but those are the books from which that information would come, and it would be possible to see from the books the amount of taxes or delinquent taxes that are shown on the books, but still it is not brought up and kept up in ledger form.

Q. What are your daily duties; what do you do down there?

A. I look after the correspondence with reference to all tax matters, at various times, such as ad valorem, poll taxes, and so forth; also with reference to accounting and complicated matters where there are some errors, and with reference to making investigations and finding out the true condition of the claims made in the accounts.

Q. If you received a request in regard to any delinquent tax matter, you would not be able to answer that correspondence, would you?

A. I would refer that to the Redemption Department.

Q. You would not handle that correspondence?

A. No, sir.

Q. That is all.

A. I might make this answer: I don't handle that; our Redemption Department handles that generally. However, there are some matters along that line where they pertain to both the departments that I do have, the current yearly business and delinquent business, where questions are submitted to both, why, I sometimes answer.

Q. Mr. Moulden, I will ask you to examine these letters; you need not read them to the committee, because they have been read already, but examine them and then tell the committee whose duty it was to answer this correspondence, and who, in fact, did answer it?

A. (Examining letter.) All of these letters at the time they were written would have been submitted to the—to myself.

Q. They were referable to you?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. Did you answer them or not?

A. In a general way, as I stated before, I made an answer to them.

Mr. Petsch: Why didn't you answer specifically?

Q. You made no specific answer, however, did you?

A. No, sir.

Q. Why didn't you answer them specifically, as called for?

A. Well, the correspondence and work that I had on hand did not permit of me to take them up individually, but I answered those letters generally—not only those, but many others along with them.

Mr. McGregor: Mr. Stevenson, there is no method of getting to the committee what letters you have before you there; the record doesn't show what letters you are exhibiting to him.

Q. Senator McGregor suggests that perhaps the committee are not informed as to what letters I have reference to. These are letters written by the authorities of Brazoria county and which have been read here, I think, heretofore, and which were not replied to by the Comptroller's Department. Did any of these officials from Brazoria county interview you personally and request this information, Mr. Moulden?

A. Yes, sir.

Q. Did you give it to them?

A. I talked with them with reference to it and told them that it would be submitted to the Attorney General, which it was at a later date.

Q. When did you submit it?

A. Well, it has not been a great while back; the correspondence would show; I don't remember the exact date.

Q. January of this year?

A. It may have been along the first part of January.

Q. And this request that you received was in July, wasn't it, 1929?

A. Well, here is one reason that it was not submitted—

Q. Well, I know, but I am asking you to answer that question. It was received in July?

A. Yes, sir; one of those letters, I think, was written in July.

Q. Yes, sir.

A. One of them down there.

Q. Now, we have been asked to ask this question: Did you handle the inheritance tax matters personally?

A. No, sir.

Q. You do not? I think that is all.

Redirect Examination.

Questions by General Keeling:

Q. Mr. Moulden, just to clarify the record, will you state if there was any significance in those letters being referred to you, or were those letters, along with hundreds of others, referred to you?

A. They were referred to me along with many others.

Q. Were they referred to you through the mailing clerk, or do you have an independent recollection of how they got to your desk?

A. I presume that they reached me through the mailing clerk. I don't have an independent recollection of how they reached my desk.

Q. Now, Pat, is there any particular significance in your not answering any letter in a reasonable time; aren't you slow in your correspondence?

A. I don't think I am.

Q. You may now be excused, unless other questions are to be propounded.

Mr. Stevenson: Only "in a general way."

The Chairman: Call the next witness.
R. B. Patton was thereupon called as a witness on behalf of the respondent, and having been duly sworn by the Chairman, testified as follows:

Direct Examination.

Questions by Mr. McGregor:

Q. State your name to the committee.

A. R. B. Patton.

Q. Where do you live, Mr. Patton?

A. Paris, Texas.

Q. Are you now connected with the Comptroller's Department?

A. Yes, sir.

Q. In what capacity?

A. Assistant tax collector, in collecting delinquent occupation taxes.

Q. There are two items involved in this inquiry, one of \$337.50, for occupation tax for the 101 Ranch Circus. Do you know anything about that?

A. Yes, sir; I do.

Q. What do you know about it?

A. Well, that was a tax that could have been collected, \$337.50 collected, and they only collected \$225.00, and distributed \$112.50 for each county.

Q. Now, did you collect that \$337.50?

A. Yes, sir.

Q. That tax was collected after the circus had exhibited, wasn't it?

A. It had; yes, sir.

Q. And you say it belonged to three counties. What counties?

A. Well, I don't know whether it belonged to the counties, I couldn't say whether it belonged to the counties or not, because I don't know how it was distributed; but it was \$112.50 that the tax collector failed to get to make the \$337.50.

Q. Mr. Patton, I will ask you if that wasn't \$112.50 for Tarrant county, \$112.50 for Eastland county, and \$112.50 for Wichita county?

A. I think it was.

Q. Making the total, as stated, of \$337.50?

A. Yes, sir.

Q. Now, there is another item of \$2458.00 for occupation taxes for the A. G. Barnes—Al G. Barnes circus. Did you collect that?

A. Yes, sir.

Q. Do you remember where you collected it, what place?

A. Yes, sir.

Q. Whereabouts?

A. It was at Greenville.

Q. Was that for taxes where the

circus had already shown and had not paid?

A. It was for places they had shown and had not paid the full amount, yes, sir.

Q. Did you send a check for that amount to the Comptroller's office?

A. Yes, sir.

Q. To whose attention?

A. Mr. Martin's.

Q. Why did you send it to his attention?

A. It was my instructions.

Q. From whom?

A. From Mr. Martin.

Q. Do you recall whether or not you sent with that item a list of the counties to which the tax was payable?

A. Yes, sir, I did.

Q. Have you assisted in a search in the Comptroller's Department for that list?

A. In every way I could.

Q. Did you keep a duplicate list of those accounts?

A. Yes, sir.

Q. Among your papers?

A. Yes, sir.

Q. At what place?

A. It was supposed to be at Paris.

Q. Have you recently made a search for that list?

A. Yes, sir.

Q. When did you go to Paris to look for it?

A. Friday night.

Q. What day did you make a search for it there?

A. Saturday.

Q. Did you find the list?

A. No, sir, I did not.

Q. I will ask you if you think it is yet possible to locate the accounts to which—among which tax is to be apportioned and to whose tax collectors it is payable?

A. I believe I could.

Q. It would be easy enough to do by running the schedule of that circus at that time, wouldn't it?

A. In that way, yes, sir, it could be found.

Q. That could be located?

A. Yes, sir.

Q. But at this time you cannot locate to what counties it belonged?

A. No, sir, I couldn't recall.

Q. It is payable to the tax collector, and not the Comptroller, originally?

A. Well, the condition there I couldn't say, because in some places it is taken care of and some others no.

Q. You didn't understand my question. The circus paid the tax collector in the locality where it showed?

A. Yes, sir.

Q. And if it is unpaid, why, then, you get in behind them and try to make them pay up?

A. Yes.

Q. And that is what you did in this instance?

A. That is what I did in this instance, yes, sir.

Q. And sent the money here for apportionment, to be to the special account?

A. Yes, sir.

Q. Now, these are the only items that you know of?

A. That is all.

Q. That are in controversy here?

A. Yes, sir.

Mr. McGregor: Take the witness, gentlemen.

Cross Examination.

Questions by Mr. Stevenson:

Q. Mr. Patton, state again what your duties are?

A. Assistant to the tax collector in collecting delinquent and occupation taxes.

Q. Collecting delinquent and occupation taxes?

A. Yes, sir.

Q. You are an employe of the Comptroller's Department, aren't you?

A. Yes, sir.

Q. Is it in line of duty for you to collect delinquent and occupation taxes due to the respective counties of this State?

A. Ask the question again, please?

Q. I say, is it in line with your duty for you to collect delinquent and occupation taxes due to the respective counties of this State?

A. Yes, sir.

Q. You collect those taxes and send them to the Comptroller?

A. Not necessarily, no, sir.

Q. What method do you pursue generally with reference to them?

A. We turn the collection to the tax collector.

Q. You turn them over to the tax collector?

A. Yes, sir; he in turn issues receipts.

Q. Issues receipts?

A. Yes, sir, for the occupation tax of the man who owed it.

Q. Well, what is the reason for sending this particular item to the Comptroller?

A. Because it was to be distributed to the respective counties, and I sent it here to the Comptroller's office at that time by Mr. Martin's instructions.

Q. That was irregular and one which was new, wasn't it?

A. I couldn't tell you.

Q. Well, you had never handled any other collections that way, had you?

A. No, sir.

Q. That was the first time you had collected taxes for the county and remitted them to the Comptroller?

A. That is the only one I can recall.

Q. Now, you say you sent it to Mr. Martin?

A. I sent it to Mr. Terrell, attention of Mr. Martin.

Q. Oh, you did?

A. Yes, sir.

Q. And what was the reason for so doing?

A. For the different counties to get their part of it.

Q. I know, but I mean with reference to sending it to Mr. Martin. Did you say it was Mr. Terrell's instructions that you did that?

A. No, sir, I did not state Mr. Terrell's instructions.

Q. But Mr. Martin's instructions?

A. Yes, sir.

Q. For you to remit this money to Mr. Terrell, for his attention?

A. Yes, sir.

Q. You sent along some letters at that time, didn't you, Mr. Patton?

A. I think I did, yes, sir.

Q. Yes, sir. I will ask you to examine this copy and see whether or not it is a photostatic copy of a letter that you wrote at that particular time with reference to that matter (handing document to witness)?

A. (After examining document.) Yes, sir.

Q. That is your signature, isn't it?

A. Yes, sir.

Q. Now, then, there is not any reference to that letter to Mr. Martin, is there?

A. No, sir.

Q. That is addressed to Mr. S. H. Terrell in person, isn't it?

A. Yes, sir.

Q. Yes, sir. Now I will ask you to examine this letter (showing witness another letter). You wrote that letter also?

A. Yes, sir.

Q. And that is not addressed to Mr. Martin at all, is it?

A. I never did address one to Mr. Martin.

Q. No, sir. But you stated a moment ago, you stated you addressed it to Mr. Terrell, attention of Mr. Martin?

A. On the envelope.

Q. Oh, on the envelope?

A. Yes, sir. In that way it goes direct to Mr. Martin.

Q. Oh, I see, it goes direct to Mr. Martin?

A. I imagine it does—I don't know.

Q. Why didn't you write it in the face of the letter, "Attention Mr. Martin"?

A. I couldn't tell you that. I never did.

Q. You never did do that?

A. No, sir.

(Mr. Stevenson handed a letter to General Keeling who examined it and passed it back.)

Mr. Stevenson: Is that all right?

Mr. Keeling: Yes, sir.

Mr. Stevenson: We offer this letter.

(The Reading Clerk thereupon read the photostatic copy of letter of September 28, 1928, identified by the witness, which is marked "Exhibit 89" and is as follows.)

"Comptroller of Public Accounts,
State of Texas.
Austin.

(Seal) Auditing Division.

S. H. Terrell, Comptroller.

J. M. Edwards, Chief Clerk.

Paris, September 28, 1928.

Hon. S. H. Terrell, State Comptroller,
Austin, Texas.

Dear Mr. Terrell: Enclosed you will find report of Occupation Tax collected from the Miller Bros. 101 Ranch Shows and the Al G. Barnes Circus.

I find that Al G. Barnes owes a difference of \$2450.00 difference between the amount paid to tax collector and what should have been paid.

I will go west Monday working gasoline tax and check the Miller Bros. 101 Ranch Show at Gainesville Saturday Sept. 29, then to Wichita Falls as instructed.

Mr. Chas. C. Cook, special tax and claim adjuster, ask that I not turn their check into the office before Wednesday, as he would have some friend of his call on you to see if there was not some way that this claim could be adjusted.

I collected for the circus only and not on any of the side shows.

He claims that the show is losing money.

Respectfully,
(Signed) R. B. PATTON."

Mr. Stevenson: Read this one, while you are at it.

(Mr. Stevenson offered the following letter and it was received in evidence and read by the Reading Clerk, marked "Exhibit 90," photostatic copy.)

"Gainesville, Texas, September 28, 1928.

Hon. S. H. Terrell, State Comptroller,
Austin, Texas.

Dear Mr. Terrell: In closed you will find collections for back tax due by Miller Brothers 101 Circus Ft Worth 112.50 Cisto 112.50 Wichita Falls 112.50 Total amount \$337.50 other places I wired answer that the full amount has been payed This is to my liking. Let me have more of such work I will be registered at the Joline Hotel, Wichita Falls Please wire instructions as to what work you want me to do.

Yours very truly,

(Signed) R. B. PATTON,
Joline Hotel, Wichita Falls, Texas."

Q. You never heard that either of these counties ever received any part of that money, did you, Mr. Patton?

A. No, sir.

Q. Have you ever had any request from the county officials as to why you did not send it to them?

A. No, sir.

Q. All you did was to remit it to the Comptroller's Department?

A. That was all.

Q. Now, the \$2458.00 item, what did you say that was for?

A. It was the difference between the price they should have paid and the price they did pay for showing each day.

Q. To whom did that belong?

A. It belonged to the counties where they showed.

Q. To the counties?

A. Yes, sir.

Q. How many counties did this belong to?

A. I can't recall.

Q. You don't now know?

A. No, sir.

Q. Have you got any record of it?

A. I think I did have—no, sir, I haven't got one—can't find it.

Q. You haven't got any record now of what that amount was for, have you?

A. No, sir.

Q. You don't know to what counties it belonged?

A. Not all of it.

Q. No, sir. And you sent that also to Mr. Martin?

A. I sent the check in an envelope addressed to Mr. Terrell, attention of Mr. Martin, as I sent all my mail.

Q. Well, we haven't got the en-

velope and there is no mention of Mr. Martin in either of the letters, is there?

A. No, sir.

Q. No mention at all?

A. No, sir.

Q. Now, you never handled any other item in your life except these two in that way, did you?

A. I don't understand that.

Q. Well, you just testified a while ago that it was your practice to send delinquent taxes due to the counties, to the Comptroller?

A. Whenever you collected this way—say, for instance, your county was due \$112.50, it can come into the Comptroller to be distributed to those counties.

Q. I understand, but you say this is the only instance in which you did this, wasn't it?

A. Yes, sir, and Wichita—or Gainesville, yes, sir.

Q. These two items which are in controversy here?

A. For shows, yes, sir.

Q. Yes, sir, only two. Now, I will ask you if you did not collect an amount from Mr. Busick in the fall of 1929, \$375.00?

A. At Amarillo.

Q. Yes, sir.

A. Yes, sir.

Q. What are the circumstances there?

A. Mr. Busick gave me a check and it was listed to be distributed to each county, for pianos, victrolas, etc., on which the charge was \$7.50 for each machine for the counties of West Texas.

Q. Have you a list of all those counties?

A. I haven't them with me, no, sir.

Q. You haven't got that?

A. No, sir.

Q. You haven't any record as to whom that belonged?

A. There is a record in this office, I sent one in.

Q. You sent one in?

A. Yes, sir. I always do.

Q. I see. And that amounts to \$375.00?

A. \$300.00 something, I don't recall how much.

Q. Did you send that amount in to Mr. Terrell also?

A. I sent it in an envelope and to the attention of Mr. Martin.

Q. That was in November, 1929?

A. Yes, sir, in November.

Q. Mr. Martin had been dead about six months, hadn't he?

A. I think he died in July.

Q. Yes, sir. Now, did you put the address on an envelope to a dead man?

A. Wait a minute. You have got me there. I addressed it to Mr. Byrns, yes, sir.

Q. Yes, sir. Then you didn't send that to Mr. Martin, did you?

A. No, I didn't send that to Mr. Martin—couldn't make connection. That was sent to Mr. Byrns. You were going too fast for me.

Q. When you sent in this check on Miller Brothers' Circus, how did you make the remittance, Mr. Patton?

A. On Miller Brothers' Circus?

Q. Yes, sir.

A. That was from Gainesville.

Q. Yes, sir.

A. They remitted by check from Mr. McElrath, tax collector.

Q. You didn't send your check, did you?

A. No, sir.

Q. You got him to send his check?

A. They paid me the cash.

Q. Miller Brothers did?

A. They paid me the cash and Mr. McElrath gave me his check in payment to Mr. Terrell—he gave me his check he issued in return for the money, and I mailed it to the office.

Q. You mailed it to the office?

A. Yes, sir.

Q. You sent that check in direct to the office, as you have testified to?

A. Sent it right in to the Comptroller's office.

Q. Mr. Patton, what portion of the occupation tax belonged to the State that you collected?

A. Two-thirds.

Q. Two-thirds of this belonged to the State?

A. Yes, sir. Wait a minute. Why, I couldn't tell what portion of it belonged, because it was collected under the wrong series.

Q. Well, you know the major amount of the occupation tax goes to the State, don't you?

A. One-third — two-thirds to the State, one-third to the counties.

Q. Had Miller Brothers paid into the State?

A. \$225.00, yes, sir.

Q. Who collected that for the State?

A. The tax collector.

Q. And didn't collect any for the county?

A. He may have collected them at places altogether, State and county together.

Q. Now, isn't it a fact that of this \$337.50, two-thirds of that belonged to the State and one-third to the county?

A. The way I figured it, yes, sir.

Q. I will ask you to examine this check and see if that is the one he made the remittance by?

A. Yes, sir.

Q. This is the check?

A. Yes, sir.

Q. I will ask you to look at the endorsement on the back?

A. (After examining check.) S. H. Terrell, State Comptroller.

Q. That is endorsed by Mr. Terrell, isn't it?

A. For deposit.

Q. Yes, sir.

A. That is what it says there.

Q. Yes, sir, "For deposit, S. H. Terrell, State Comptroller," and it was deposited in the Austin National Bank, wasn't it?

A. Federal Reserve, both, that is what is stamped on the check.

Q. Yes, sir. I believe that is all. Mr. Patton, did any part of this \$2458.00 belong to the State as occupation tax?

A. I would judge that two-thirds of it did.

Q. Yes, sir, two-thirds of that belonged to the State?

A. Yes, sir.

Q. That is all.

Mr. McGregor: Stand aside.

General Keeling: Mr. Chairman, and Gentlemen of the Committee: At this juncture I desire to have read into the record the report of the committee appointed by the Speaker of the House of Representatives during the Forty-first Legislature, found at page 170 of the House Journal. It is short.

Mr. Stevenson: Let us see what it is.

(The report was received in evidence and read by the Reading Clerk as follows, to wit):

House Journal

Regular Session, Forty-first Legislature,
Pages 170-171.

Mr. Beck offered the following resolution:

Whereas, The undersigned members of the committee appointed by the House to examine the accounts of the State Comptroller and the State Treasurer are charged by the rules of this House with the duty of preparing and submitting to it reports of the conditions of the accounts kept by each of the said officers; and

Whereas, A casual examination already made reflects the fact that due to the provisions of the law both the

Treasury Department and the Comptroller's Department are forced to keep their records and accounts in a way that is not in accordance with modern accounting practice, and that the highest salary authorized by law among the men charged with such accounting and auditing as is done in the Comptroller's Department is \$2700 per year, and that the lack of employees makes it impossible to organize an adequate auditing force to check up upon the receipts, disbursements, and funds of the various departments, boards, commissions and other appendages of the State government; and

Whereas, We realize that the task imposed on us by the rules of the House is impossible to perform within the time allowed for this session of the Legislature; and

Whereas, The task is one that could only be accomplished by individuals specially trained in the profession of accounting and auditing; and

Whereas, As individual members of the committee charged with this duty, we shall hesitate to sign any report stating that we have audited or could audit these accounts, which we have every reason to believe have been honestly handled according to the laws governing these two departments, so as to respect the true condition;—

Mr. Petsch: Mr. Chairman, we have been investigating that. That was ruled out by a point of order, and, therefore, it has no place in the record of this House. We didn't have any notice of that, however, until just now. We, therefore, do not think it is admissible, could not throw any light upon this case, it is not a record of the House because it was not adopted—it is merely a report of the committee, not acted upon on account of point of order made and sustained by the Speaker of the House.

General Keeling: Mr. Chairman, in reply to the objection just made, we will state that this report does not appear to have been ruled out on point of order, but only that portion of it which attempted to carry an appropriation for stenographers and the hiring of auditors, that was ruled out of order. The rest of the report is the report by that committee, signed by all of the members of the committee, to this House.

Mr. Stevenson: Let him read it, Petsch, it doesn't make any difference.

Mr. McGill: Withdraw the objection.

Mr. Petsch: I withdraw it.

Judge Sinks: The objection is withdrawn.

(The Reading Clerk thereupon proceeded with the reading of the report, as follows, to wit):

Therefore, be it resolved by the House of Representatives, That the said committee be authorized to employ ten (10) senior certified public accountants and twenty (20) junior certified public accountants for a period not exceeding two years, and at a rate of pay not exceeding that which is customary to pay such employees, namely, \$35 per day for senior accountants and \$20 per day for junior accountants, to assist it in its audit; and further, that it be authorized to employ such stenographers and clerks to assist the said accountants as in its opinion may be necessary, not to exceed twenty-five (25) at any one time, and to purchase such adding machines, comptometers, stationery and other modern accounting devices as may be necessary, all of said salaries to be paid out of the contingent expense fund.

Signed—Beck, McCombs, Speck, Kemble, Baldwin, Kinnear, Duvall.

General Keeling: We now call to the witness stand Mr. J. A. Phillips, of the Phillips Auditing Company, of Houston.

J. A. Phillips was thereupon called as a witness in behalf of the respondent, and having been duly sworn by the chairman, testified as follows:

Direct Examination.

Questions by Mr. Keeling:

Q. What is your name, business and place of business?

A. J. A. Phillips, certified public accountant, Houston, Texas.

Q. How long have you lived in Texas, Mr. Phillips?

A. Thirty-seven years, since birth.

Q. How long have you been a certified accountant?

A. Since May, 1920.

Q. What was your business prior to May, 1920?

A. I was employed by a firm of public accountants just preceding; in fact, I was still with the firm at the time I received my certificate as certified public accountant.

Q. Were you ever employed in the Comptroller's Department of the State of Texas?

A. I was.

Q. For how long and under whom?

A. For practically eight and a half

years, I believe, under the late H. B. Terrell.

Q. The father of this respondent?

A. Yes.

Q. What were your duties in there at that time?

A. Well, my duties were many, as I recall; it would be more or less difficult to recall back to my mind all the things that I did; I remember that I handled school and special warrants, pension warrants, and generally, as we had it arranged in the department at that time, I did whatever work needed to be done in any of the departments when I was available to do it.

Q. Did you possess a reasonable familiarity with the general details of the office at that time?

A. I think not; I had nothing to do with the bookkeeping department or the general warrant department.

Q. Have you been called on by Mr. S. H. Terrell to make an audit of the desks in his office, touching the items that are embraced in the audit of Mr. Moore Lynn?

A. I have.

Q. When did you begin that work?

A. I don't believe I am prepared to give the exact date I began this work.

Q. Have you a copy of Mr. Lynn's audit?

A. I have.

Q. I will ask you to turn to page 9.

A. Which report?

Q. January 27 and 29, 1930, the first one?

A. I have that page.

Q. That deals with the checks drawn on the Texas Bank & Trust Company?

A. It does.

Q. I call your attention to two items, dated April 4th, being checks 5, 6, 7, 8 and 9, and payable respectively to Tom Folts, \$15.85; A. P. Bagby, \$15.80; J. W. Burke, \$32.72; E. F. Elkin, \$30.17; E. E. Upshaw, \$11.85. Did you examine and trace those four items and find out what they were paid for?

A. Let me answer first, Senator, that there are five items, and the third item is \$30.72, instead of \$32.70. I did examine them, photostatic copies of Treasury warrants drawn in like sum.

Q. I will ask you if you found the expense accounts first, or the warrants first?

A. I found the warrants first.

Q. All right, go ahead.

A. I examined those warrants and found that these particular warrants that I have mentioned therein, in the same amounts I have just stated, were drawn to the particular payees men-

tioned here, and that those warrants show evidence of having been paid by the State Treasurer's Department.

Q. I will ask you to examine that warrant and ask you if it is a photostatic copy of this warrant mentioned here, and show who it is drawn to?

A. That is a photostatic copy of warrant drawn to Thos. W. Folts, in amount of \$15.85.

Q. I will ask you to examine this expense account and see if the similarity in name, date, etc., shows it to have been based on the expense account for which the warrant was drawn?

A. This expense account contains four items which aggregate \$15.85 and is accompanied by an affidavit executed by Thos. W. Folts.

Q. Now, in connection with this witness' testimony, I want to offer in evidence the expense account, and I will have to have it read into the record rather than give them to the stenographer, because it is a record of a State department and we have no right to have it incorporated in the record or to turn it over to any person for that purpose. It is as follows:

Expense Account.

The State of Texas.

To Thos. W. Folts, Dr.

Money expended while traveling on official business in the capacity of Special Examiner for the State Comptroller's Department covering the dates from March 30 to April 2, 1927, both inclusive.

Date.	Items.	Cash Paid Out.	Railway Srip Used.
March 30	Room \$2.00, meals \$1.70	\$ 3.70	
March 31	Room \$2.00, meals \$2.10	4.10	
April 1	Room \$2.00, meals \$2.15	4.15	
April 2	Room \$2.00, meals \$1.90	3.90	
		<hr/> \$15.85	

I do solemnly swear that the above expense account, totalling \$15.85, is true, correct, justly due and unpaid and that each item shown therein was actually expended by me for the purposes therein stated.

THOS. W. FOLTS.

Sworn to and subscribed before me by above named party this the 2nd day of April, 1927.

J. C. ROBERTS.

Payable out of appropriation J443. Approved for payment to the amount of \$15.85. Date, April 4th, 1927.

S. H. TERRELL,
State Comptroller.

Mr. McGregor: We now offer in evidence, in connection with that, State Treasurer's Warrant 51594, which I ask the Reading Clerk now to read, together with the endorsements thereon:

Whereupon the Reading Clerk read the above mentioned warrant, and which is as follows:

General Warrant—Original.
No. 51594: \$15.85.

Treasury Warrant,
Comptroller's Office,
Austin, Texas, April 7, 1927.

The Treasurer of the State of Texas
will pay to the order of Thos. W. Folts,

Fifteen & 85/100 Dollars, out of any money appropriated by an Act of the Texas State Legislature for the year A. D. 1925, Appropriation No. J-443, account of T. Exp. being for Copt. Dept.

S. H. TERRELL,
Comptroller.

Signed:

W. GREGORY HATCHER,
State Treasurer.

Endorsed on back: Thos. W. Folts,
per E. J. Martin.

Q. Now, Mr. Phillips, the expense account which you hold in your hand, what is the amount of that expense account?

A. The amount of this expense account is \$15.80.

Q. I will ask you whether it corresponds with the warrant issued for like amount, and that it is the basis of warrant number 51595, payable to A. P. Bagby, which you hold in your hand?

A. It does.

Mr. McGregor: We now offer the expense account in evidence and ask that it be read to the committee in evidence.

Whereupon the Reading Clerk read the expense account above referred to, and is as follows:

Expense Account.

The State of Texas,

To A. P. Ragley, Jr., Dr.

Money expended while traveling on official business in the capacity of Special Examiner for the State Comptroller's Department covering the dates from March 30 to April 2, 1927, both inclusive.

Date.	Items.	Cash Paid Out.	Railway Strip Used.
March 30	Rooms \$2.00, meals \$1.85	\$ 3.85	
March 31	Rooms \$2.00, meals \$2.00	4.00	
April 1	Rooms \$2.00, meals \$1.95	3.95	
April 2	Rooms \$2.00, meals \$2.00	4.00	

I do solemnly swear that the above expense account, totalling \$15.80, is true, correct, justly due and unpaid and that each item shown therein was actually expended by me for the purposes therein stated.

A. P. RAGLEY, JR.

Sworn to and subscribed before me by above named party this the 2nd day of April, 1927.

J. C. ROBERTS.

Payable out of appropriation J443. Approved for payment to the amount of \$15.80. Date, April 4th, 1927.

S. H. TERRELL,
State Comptroller.

Q. Now, in connection with that expense account, we offer in evidence Treasury Warrant No. 51595, and ask that it be read in evidence.

Whereupon the Reading Clerk read said warrant, and it is as follows:

General Warrant—Original.

No. 51595: \$15.80.

Treasury Warrant,

Comptroller's Office,
Austin, Texas, April 7, 1927.

The Treasurer of the State of Texas will pay to the order of A. P. Bagby, Jr., Fifteen & 80/100 Dollars, out of any money appropriated by an Act of the Texas State Legislature for the year A. D. 1925. Appropriation No. J-443E, Account of T. Exp., being for Compt. Dept.

S. H. TERRELL,
Comptroller.

Signed:

W. GREGORY HATCHER,
State Treasurer.

Endorsed on back: A. P. Bagby, Jr., per E. J. Martin.

Q. The expense account which you have there of J. W. Burke, what is the amount of that?

A. \$30.72.

Q. Did you find any warrant of corresponding amount and date payable to Mr. Bagby?

A. That is it. I have a photostatic copy of it here.

Mr. McGregor: I will ask you is this photostatic copy of this warrant is a copy that corresponds with the expense account in such a way as to indicate that the expense account is the basis of the warrant?

A. It does.

Mr. McGregor: We offer the expense account in evidence and ask that the Reading Clerk read it to the committee.

Whereupon the Reading Clerk then read the expense account, which is as follows:

Expense Account.

The State of Texas.

To J. W. Burke, Dr.

Money expended while traveling on official business in the capacity of Special Examiner for the State Comptroller's Department covering the dates from Tuesday, March 29, 1927, to April 2, 1927, both inclusive.

Date.	Items.	Cash Paid Out.	Railway Strip Used.
March 29	R K Fare Austin to Ft. Worth	\$10.92	
March 30	Hotel	2.50	
March 30	Meals	2.25	
March 31	Hotel	2.50	
March 31	Meals	2.55	
April 1	Hotel	2.50	
April 1	Meals	2.60	
April 2	Hotel	2.50	
April 2	Meals	2.40	
		<u>\$30.72</u>	

I do solemnly swear that the above expense account, totalling \$30.72, is true, correct, justly due and unpaid and that each item shown therein was actually expended by me for the purposes therein stated.

J. W. BURKE.

Sworn to and subscribed before me by above named party this the 2nd day of April, 1927.

L. O. HULSEY.

Payable out of appropriation J443. Approved for payment to the amount of \$30.72. Date, April 4th, 1927.

S. H. TERRELL,
State Comptroller.

Mr. McGregor: In connection with that expense account, we offer Treasury Warrant No. 51596, with the endorsements thereon, and ask that it be read to the committee.

Whereupon the Reading Clerk read the warrant, which is as follows:

General Warrant—Original.

No. 51596: \$30.72.

Treasury Warrant,

Comptroller's Office,

Austin, Texas, April 7, 1927.

The Treasurer of the State of Texas will pay to the order of J. W. Burke, Thirty & 72/100 Dollars, out of any money appropriated by an Act of the Texas State Legislature in the year A. D. 1925. Appropriation No. J-443-E. Account of T. Exp., being for Comp. Dept.

S. H. TERRELL,
Comptroller.W. GREGORY HATCHER,
State Treasurer.

Endorsed on back: J. W. Burke, per E. J. Martin.

Q. Now, Mr. Phillips, I will ask you to examine the expense account which you have in your hand and state whether or not you found the warrant in the Treasury by reason of its date, identity of the amount, and payee indicating to you that it was based on that account?

A. This account of E. F. Elkins, this expense account is executed by Mr. E. F. Elkins, in the sum of \$30.17, and I have examined the photostatic copy of the State Treasury warrant for a like amount.

Mr. McGregor: We offer this expense account in evidence and that it be read.

Whereupon the Reading Clerk read the expense account, which is as follows:

Expense Account.

The State of Texas.

To E. F. Elkins, Dr.

Money expended while traveling on official business in the capacity of Special Examiner for the State Comptroller's Department covering the dates from March 29th to April 2nd, 1927, both inclusive.

Date.	Items.	Cash Paid Out.	Railway Srip Used.
March 29	Railroad Fare Austin to Ft. Worth	\$10.92	
March 30	Hotel \$2.50, meals \$2.30	4.80	
March 31	Hotel \$2.50, meals \$2.40	4.90	
April 1	Hotel \$2.50, meals \$2.20	4.70	
April 2	Hotel \$2.50, meals \$2.35	4.85	
		<u>\$30.17</u>	

I do solemnly swear that the above expense account, totalling \$30.17, is true, correct, justly due and unpaid and that each item shown therein was actually expended by me for the purposes therein stated.

E. H. ELKINS.

Sworn to and subscribed before me by above named party this the 2nd day of April, 1927.

L. A. HULSEY,

Notary Public in and for Tarrant Co.

Payable out of appropriation J443. Approved for payment to the amount of \$30.17. Date, April 4th, 1927.

S. H. TERRELL,

State Comptroller.

Q. Now, in connection with that account, we wish to offer Treasury Warrant No. 51597, payable to E. F. Elkins, for \$30.17, together with the endorsements thereon, and will ask that it be read in evidence.

Whereupon the Reading Clerk read the warrant, which is as follows:

No. 51597: \$30.17.

Treasury Warrant,

Comptroller's Office,

Austin, Texas, April 7, 1927.

The Treasurer of the State of Texas will pay to the order of E. F. Elkins, Thirty & 17/100 Dollars, out of any money appropriated by an Act of the Texas State Legislature for the year A. D. 1925. Appropriation No. J-443-E. Account of T. Exp., being for Compt. Dept.

S. H. TERRELL,

Comptroller.

Signed:

W. GREGORY HATCHER,
State Treasurer.

Endorsed on back: E. F. Elkins, per
E. J. Martin.

Q. Now, then, I will ask you to examine this expense account and state whether or not a photostatic copy of the warrant exhibited to you by reason of the identity of the name, date and the amount, would indicate to you that it was based on that expense account?

A. It does.

Q. What is that expense account?

A. This is an expense account in the amount of \$11.85, and the account was executed by E. E. Upshaw.

Mr. McGregor: We offer the expense account in evidence and ask that it be read in evidence before the committee.

Whereupon the Reading Clerk read the expense account above referred to, and same is as follows:

Expense Account.

The State of Texas.

To E. E. Upshaw, Dr.

Money expended while traveling on official business in the capacity of Special Revenue for the State Comptroller's Department covering the dates from 3/31 to 4/2, 1927, both inclusive.

Date.	Items.	Cash Paid Out.	Railway Strip Used.
March 31	Bus Fare—Austin to Waco	\$4.35	
March 31	Supper	.75	
April 1	Breakfast	.35	
April 1	Lunch	.50	
April 1	Dinner	.80	
April 2	Breakfast	.30	
April 2	Lunch	.65	
April 2	Dinner	.75	
April 2	Car Fare—Court House to 25th Lasker St.	.15	
April 2	Stamps	.25	
April 2	Hotel Waco	3.00	
		<u>\$11.85</u>	

I do solemnly swear that the above expense account, totalling \$11.85, is true, correct, justly due and unpaid and that each item shown therein was actually expended by me for the purposes therein stated.

E. E. UPSHAW,

Sworn to and subscribed before me by above named party this the 2nd day of April, 1927.

SILAS O. SANDERS.

Payable out of appropriation J443. Approved for payment to the amount of \$11.85. Date, April 4th, 1927.

S. H. TERRELL,
State Comptroller.

Mr. McGregor: In connection with that expense account, we offer Treasury Warrant No. 51598, and will ask the Reading Clerk to read same to the committee.

Whereupon the Reading Clerk read Treasury warrant referred to, which is as follows:

No. 51598: \$11.85.

Treasury Warrant.

Comptroller's Office.

Austin, Texas, April 7, 1927.

The Treasurer of the State of Texas will pay to the order of E. E. Upshaw, Eleven & 85/100 Dollars, out of any money appropriated by an Act of the Texas State Legislature in the year A. D. 1925. Appropriation No. J-443-E. Account of T. Exp., being for Compt. Dept.

S. H. TERRELL,

Comptroller.

W. GREGORY HATCHER,
State Treasurer.

Endorsed on back: E. E. Upshaw, per E. J. Martin.

Q. Now, Mr. Phillips, I will ask if you make an investigation at the Texas Bank & Trust Company of the cashier's checks that were purchased with the \$129.98?

A. We went down, I say we, I went down to the Texas Bank & Trust Company and took from the records a complete list of paid items and deposits. I did not discuss with the Texas Bank & Trust Company the five items represented in this \$129.98.

Q. Did you find that there were five items or just one?

A. There were five items.

Q. Evidenced by cashier's checks?

A. Yes, sir.

Q. Then they were purchased by that check instead of checks?

A. That is correct.

Q. Now, in the Austin National Bank statement of deposits, there appears as of date April 28, 1928, a de-

posit of \$1912.50, Exhibit "C," and it would be on page 2 of Exhibit "C." Now this \$1912.50, being among the deposits in the Austin National Bank, is embraced in the report of Mr. Lynn, as unaccounted for. I will ask you if you traced the source of deposits of that item of \$1912.50?

A. I can answer that question in this way: To try to identify the source of all these deposits, we made a diligent search in the Comptroller's office, going down in the basement, looking for records, and we found a report turned in by Mr. Patton and Mr. Grafton, that included items that aggregated \$1912.50, and the date of that report is some time prior to the date of the deposit. We concluded that that deposit represented the collections shown on that report.

Q. That was the source of the deposit?

A. Yes, sir.

Q. Now did you trace the disposition of that particular deposit?

A. We were able to do this only. The paid checks were not available to us. But we found this: We found items in the bank statement on their ledger sheet, paid within reasonable periods of time, that these deposits had been made, items that aggregated the sum of \$1912.50. We compared these paid items as reflected by the bank statement, with the reports turned in by Messrs. Patton & Grafton. We were unable to determine from the bank record the payee from that record, but by comparing the items, we found they were paid by the bank within a reasonable time, and therefore entirely agreeable with the report of Messrs. Patton and Grafton with respect to that amount.

Q. Then, by that method, you located, to your satisfaction, the origin of this \$1912.50?

A. Yes, sir.

Q. And to your satisfaction, the disposition of that \$1912.50?

A. I am entirely satisfied as to that.

Q. Now, Mr. Phillips, without going into the depth of each item that was located, I will ask you if on the data furnished you by the Comptroller's Department and secured by your own industry, and with the audit of Mr. Lynn in mind, if you were not able to locate all of the items that came into this bank deposit?

A. Do I understand that you are asking me the source of all these deposits there?

Q. No. The amounts and where they

were payable. Whether in escrow, whether on contingent items, whether payable to the counties, or unknown items. In other words, if you have reduced the audit where you are now certain as to the amount that is unaccounted for at this time?

A. I will say this—that I have thoroughly gone into all transactions involved in the sums deposited in the two respective bank accounts, and with the exception of two items, and have determined to my satisfaction the source of these deposits and I have continued in an effort to determine the disposition of these collections, and I feel that I know the sum of money that has been collected and deposited to these accounts that has not been accounted for.

Q. Your audit shows money unaccounted for or departmental deficiency of \$12,289.19, I believe?

A. That is correct.

Q. Mr. Lynn's original report indicated a departmental deficiency of some \$54,000. I will ask you if you did not reach the same conclusion, or if he did not reach the same conclusion that you have, in that there is now a departmental deficiency at this time figuring close to and places the department deficiency at this time at \$75.00, after deducting from it item of the \$5800.00 that was paid in the two inheritance tax items?

A. My belief is that Mr. Lynn is substantially correct, and he agrees with me; his figures are substantially in agreement with my figures in that respect. The only disagreement between Mr. Lynn and myself is with reference to these escrow items. Mr. Lynn, with respect to the \$75.00 did not give credit for checks that were issued against this special account in the Austin National Bank, to the four counties. Because those checks had not been paid by the bank. Now, I satisfied myself that the checks were issued totaled \$75.00, and I believe that they were mailed out—the stub shows that they were issued. One to Potter county for \$7.50, one to Childress for \$7.50, one to for \$45.00, one to Hutchinson county for \$15.00, and that makes a total of \$75.00 difference between Mr. Lynn and myself.

Now, with respect to the \$5883.50, the difference is simply this. We consider this as being accounted for to the State in deposit made on January 27, 1930, aggregating \$5883.50.

Now, in our report, we pointed out very clearly the date of this account and

the fact that it was from the sources other than this bank account, but was paid into the Treasury from some other bank account. The thing that we are trying to do was to determine the real facts with respect to the payments made into the Treasury and to satisfy individuals and corporations.

And I state it to be a fact that those items have been paid into the Treasury to that extent. There can be no question as to them being accounted for, but as to how they were accounted for. The State has its money.

Q. Now, recurring to the seventy-five dollars under your audit, the department would still owe somebody fifteen dollars?

A. And we so stated in our report.

Q. That is the Busick item—a refund due Mr. Busick?

A. Yes, sir.

Q. Now, handling it this way, your conclusion and Mr. Lynn's conclusion are in accord in one respect?

A. That is correct.

Q. Leaving the gross of both of you as a departmental deficiency at \$12,289.19?

A. That is correct.

Q. If that amount had been wiped out in due course of liquidation, the payments would have been finally cleared in that department?

A. That is correct. With respect to the books being balanced, I want to say that that is just a matter of bookkeeping in the department. I want to reply to the question in this way: When these amounts were paid-in refund, then the matter would be entirely closed so far as the accounting for all of the collections is concerned. That is, assuming the refund of \$15.00 is made and the checks outstanding are paid at the bank.

Q. Now, then, with that in mind, Mr. Phillips, I will ask you to go with me, or to take up these items seriatim and dispose of each item, and see what we have left. Now there is the item of \$337.50, that is known as the 101 Ranch Circus—can you trace that item?

A. That is a collection from the Miller Brothers 101 Ranch Circus, that was deposited in the Austin National Bank on October 1, 1928. It is a collection that was reported by Mr. R. B. Patton.

Q. Now, if since the audit was made, as to that particular item, Mr. Terrell has accepted the audit and paid that amount of money by cashier's check to Eastland, Wichita and different counties, it would take that item out of the account?

A. It would, if that belongs to those counties.

Q. Has your audit traced those items to show to what counties it belongs?

A. Well, it has and it has not. We did not trace it out in the audit. We made no independent investigation of that. We accepted it as found—in that we found the source of the collection.

Q. The next item is for \$2458.00 known as the Al G. Barnes Circus item. What is the source of that item?

A. That item was deposited in the Austin National Bank on October 1, 1928—I believe that to be the date of the deposit.

Q. What was the source of it, and what was it for?

A. I located a letter in the files of the Comptroller in the basement from Mr. Patton reporting that item to the Comptroller. And in this letter he stated that it was a collection made from the Al G. Barnes circus. There was no detail attached to the letter showing the counties that may have been entitled to this collection. Mr. Patton's letter has been read into the record.

Q. Now, you state that that item was deposited on October 1, 1928, in the Austin National Bank?

A. That is correct.

Q. And from the item and the letter of Mr. Patton, it appears that it was for occupation taxes belonging to various counties in the State yet unascertained so far as the record is concerned?

A. I do not recall the exact language of that letter. I think I do recall that it was a collection reported by Mr. Patton as having been made from the Al G. Barnes circus. I do not recall the language of the letter as to details of to what counties it belonged to.

Q. If Mr. Terrell has accepted this item in your audit as correct, and placed, assuming it was correct, and placed the \$2458.00 to the credit of this item and to this account, in the Austin National Bank, that item would pass out of the record and be answered for.

A. It would be answered for—I would have to answer you this way: If this item should be covered into the Austin National Bank and held, pending the determination of where it belonged, it would certainly clear the record on it.

Q. You are in a position and can not tell from the record who owned that money at all, can you?

A. I am not in a position to say whether that money belongs to the county or whether it belongs to any particular person, company or individual.

Q. Or whether the person who collected it had the right to collect it?

A. I am not concerned in that collection.

Q. The item of \$775.94, which was in the Texas Bank & Trust Company, by virtue of a transfer from the Austin National Bank, if Mr. Terrell should accept your audit as correct, and if that money should be placed in the Austin National Bank, it would take that much out of the amount stated in the auditor's report?

A. It would, as a matter of course.

Q. Now, the record discloses that there is \$2334.84 that was placed in escrow by the Independent Oil Company, and the record shows that that much money was deposited in the Austin National Bank?

A. That is correct. It shows that the money was deposited in the Austin National Bank, and it is recorded in the book in the Comptroller's office, making up one of the items of the "Money collected—checks held in escrow."

Q. If that escrow is yet undetermined, and Mr. Terrell accepts your audit, having had you employed to make it, and has deposited or should deposit this money in the Austin National Bank, to the amount of \$2334.84, to await the ascertainment of the ownership of that money, that would pass out of the record?

A. If that item is placed on deposit, or in a place satisfactory to the situation, then it would clear the item up.

Q. Now, then, that leaves, without going into the details, the \$15.00 Busick item, the \$28.85 escrow, account of the Auto Supply Company of \$26.32 as unknown in this list of deposits in the Austin National Bank. Now, if Mr. Terrell should accept your audit as to these items, and place these amounts in the bank, that would take those items out of the record, wouldn't it?

A. It would take them out of the record you have as items handled in the manner of deposits, in a manner that would be satisfactory to the situation. I want it clearly understood that I am not taking any position with respect to the fact that deposits in the bank account might meet all the matters involved, but it would certainly clear up the matter in so far as the accounting is concerned.

Q. Now that leaves this—this item of \$6312.74, which has been determined as the escrow item of the Magnolia Petroleum Company?

A. That is correct.

Q. Now, then, if that was adjusted, or paid to the Magnolia Petroleum Company, then we come back to your

proposition that that would close that account?

A. That is correct.

Q. Now to restate it, the record appears to be, does it not, and your audit so determines it, that there is due the Magnolia Petroleum Company \$6312.74?

A. That is correct.

Q. There was due Busick \$15.00?

A. That is right.

Q. There is held in undetermined escrow for the Auto Supply Company, \$28.85—is that right?

A. That \$28.85 is so designated.

Q. And the \$26.32 as unknown?

A. That is the item I cannot find anything about.

Q. And then the \$337.50, the Al G. Barnes \$2458.00 and the unaccounted for item of \$775.94?

A. Yes, sir.

Q. Now, I want to ask you this question: Unless some one of these funds is the property of the State, then, Mr. Terrell does not owe the State anything, does he?

A. That is a question. I will answer that question this way. So far as the items handled through these two bank accounts, or any other items that I have any knowledge of in general are concerned, if it is determined, that these items do not belong to the State, then, to the extent of my knowledge, there would be no indebtedness to the State at this time—

Q. Now, let's take them up item at a time—Never mind, I will withdraw the question—

Q. Now, Mr. Phillips, I have gone over this audit more or less in detail with you before you took the stand, have I not?

A. That is correct.

Q. Now, I do not want to make a lawyer out of you and thus ruin a good auditor—is there any other item, fact, incident or circumstance, that I have discussed with you to which you attach any importance, that I have not covered in my examination of you here on the stand?

A. I do not recall it at this time.

Mr. McGregor: Take the witness.

Cross Examination.

By Mr. Stevenson:

Mr. Stevenson: You say that you are an auditor?

A. Yes, sir.

Q. Have you completed a full audit of the Comptroller's Department?

A. I have not, and so state in my report.

Q. What particular portion of the Comptroller's office have you audited?

A. We examined or audited, in the short time allotted to us, only the items that were embraced in the State Auditor's report pertaining to the transactions had through the Austin National Bank special account, and the Texas Bank & Trust Company special account.

Q. Mr. Phillips, you are familiar with the information furnished by the Comptroller to the State Auditor that he was having an audit made of two desks—two particular desks in his department?

A. I have knowledge of that letter by personally reading it.

Q. Now, did you make a complete audit of those two desks?

A. I did not.

Q. That, to that extent, the Comptroller's information was erroneous, was it not?

A. In what respect, Mr. Stevenson? I do not quite get your question—

Q. I am asking you if you were familiar with the letter in which the Comptroller stated that he was having an audit made of those two desks, and you stated that you were. Now you say you did not audit those two desks. Then, I asked you the question, "To that extent, that information was erroneous?"

A. Well, Mr. Terrell may have contemplated that we would make a complete audit of the two desks, but it must be observed that it would be physically impossible to audit those two desks in that length of time in which we were given to do the work.

Q. Well, to get the matter clear, you did not make a complete audit of the two desks?

A. I did not.

Q. You have just audited here some particular items?

A. We made a complete examination of all data that was offered to us pertaining to those two accounts.

Q. Let us take up first the Texas Bank & Trust Company account—you made a complete audit of that account?

A. I made a complete examination of all the available data.

Q. What do you mean by that? Did you examine the cancelled bank checks drawn on that account?

A. I did not so state in my report.

Q. You were not furnished anything on it?

A. No, sir.

Q. Did you ask the Comptroller, Mr. Terrell, to let you see those cancelled checks on that account?

A. I would not put it that way. I

asked the Comptroller this question: If there was not some lead that he could give me that would enable me to find those cancelled and paid bank checks—that it did not make any difference what those checks disclosed, that finding them would be very desirable, and I went down in the basement and personally made an effort to find the cancelled bank checks. I crawled over furniture and boxes looking for those checks.

Q. Did Mr. Terrell tell you what had become of them?

A. I did not discuss it with him at all any further. It was stated to me that it was reported that they were not available. I did not discuss it with him after that. The only thing I discovered was they could not be located.

Q. You secured that information from Mr. Terrell himself?

A. I think I did.

Q. Now you knew, or rather found out, in your examination, that a number of these checks were given for personal items, didn't you?

A. I will tell you what we did with respect to those checks. We made a complete list—I will put it this way. We listed the amount of those checks on a work paper, and then added the payee. We made this list in duplicate. We retained one copy and furnished Mr. Hardeman with a copy. I went over the list with him, and then we examined the bank statement. The list that I made was made from the bank statement.

Q. You made that list, as to amounts, from the bank statement?

A. That is correct.

Q. And not as to payee?

A. That is right.

Q. And from whom did you get the payee?

A. From Mr. Hardeman. However, I believe that I said I. I would say that Mr. Brunken was associated with me in examination of the check stubs in respect to this particular account. I think that is true.

Q. You did not see the original cancelled check, however, did you?

A. I did not.

Q. From that examination, and from these check stubs, you found out that a number of these checks, aggregating more than seven hundred dollars, were for personal use?

A. They were drawn by him for uses that could not be allocated by him for State uses. That exact language I used to distinguish those—

Q. (Interrogating.) Wait a minute,

we will get to that. Did not Mr. Terrell tell you that these were for his personal use?

A. I did not discuss that particular phase of the matter at all with Mr. Terrell.

Q. You pointed out to him that they could not be allocated to State use?

A. I do not know that I discussed that with Mr. Terrell at all.

Q. Were not you making this audit for Mr. Terrell?

A. I was, and I satisfied myself that they were not for State use, and that was the only concern I had about it.

Q. Are you prepared to state that you satisfied yourself that they were for personal use?

A. I am prepared to state that they were not for State use. They were for personal and other uses not determined. I will answer your question that they were not for State use.

Q. Mr. Phillips, I would ask you if it is not a fundamental proposition in accounting that every credit must have one or more corresponding debits, and every debit must have one or more corresponding credits?

A. I will answer the question by saying it is not necessarily a fundamental accounting practice at all. It is fundamental with double-entry accounting, but there are a lot of people who stick to the old single-entry bookkeeping.

Q. Isn't it fundamental that there must be corresponding debits for every credit?

A. It is fundamental to double-entry bookkeeping.

Q. Now, you say you traced the source of these credits on the bank account?

A. I traced the source of the collections.

Q. And from that determined the nature of the credit, didn't you?

A. What do you mean when you say nature of the credits?

Q. I will put it specifically. Did you find any trace of a personal fund that was deposited in the Texas Bank and Trust Company?

A. I did not.

Q. Every single deposit that you found was traceable to a deposit that originated with Mr. Terrell by virtue of his office as State Comptroller, wasn't it?

A. I will answer that question by saying that every deposit was traced to a source other than Mr. Terrell, and the sources are clearly set out in that report.

Q. Now, by that, clearly, you mean to say that he had no personal funds in this Texas Bank and Trust Company?

A. I found no personal funds in the Texas Bank and Trust Company.

Q. You did find personal withdrawals in that account, didn't you?

A. I found withdrawals that I did not consider for State purposes. Until I had seen those checks and had examined them I would not say positively it was not personal. I have answered that question, that I did not consider them for State use.

Q. Now, with respect to a certain portion of these withdrawals that were mentioned by Mr. Folts, Mr. Burks, Mr. Bagby and Mr. Upshaw, aggregating \$104.39, you determined the payees in those accounts, didn't you?

A. I did.

Q. That is the correct total, \$104.39?

A. I think that is the correct total.

Q. Now, you have been shown by Senator McGregor certain warrants drawn on the State Treasurer in the exact amount of each one of those items?

A. That is correct.

Q. From your analysis of that, I want you to state to this Committee frankly if it is not a fact that those warrants constituted duplicate payment for the same identical item?

A. I am going to answer that question, I believe very correctly and thoroughly consistent with what I believe to be the facts, and I think that is what this Committee wants. Now, the fact is that I was told that those expense checks were issued against this account in the bank and that subsequently warrants in like amount were written, with the thought in mind of paying that sum withdrawn from the bank back into the bank. Now, that is the information I have.

Q. Who told you that?

A. I think I discussed that with Mr. Terrell; in fact, I know I did, at the time we examined the photostatic copies of those warrants.

Q. Well, they did not go back into the bank account, did they?

A. They did not, and I so stated in my report.

Q. Yes, sir, that is correct. I was just going to call your attention to that in your report, and that the \$104.39 which was withdrawn from this Texas Bank and Trust Company, and payable to these different individuals that have been named, was subsequently paid to the same individuals by Treasury warrants of that amount, and never went

back into the Texas Bank and Trust Company?

A. I would not say that they were subsequently paid to the same individuals.

Q. Don't you know that?

A. I want to answer questions fairly and correctly. Warrants were drawn to the same individuals and photostatic copies indicate that they were cashed by Mr. E. J. Martin. I am not prepared to testify that the same payees received the money.

Q. But you are prepared to state that the State of Texas paid out the money, regardless of who got it?

A. I have already stated that, both here and in my report. If you will permit, I would like to read what I said in respect to those items.

Q. I will read it to you. You state in your report, at the top of page 10: "Withdrawals aggregating \$104.39 appear to have been intended for 'State use,' but inasmuch as the account was not refunded they have not been so applied."

A. That is correct. I do not apply them as having been used for State purposes, though it was explained to me that they were intended for that purpose when issued.

Q. Senator McGregor undertook the other morning to make it appear that the State of Texas received \$808.00 more out of this Texas Bank and Trust Company than was paid into it. I want to ask you if it is not a fact that of the specific items that were placed in the Texas Bank and Trust Company that \$1,000.00 of that was checked out to pay an amount that had been collected from the Littlefield Oil Company and that was, in fact, deposited in the account?

A. That is quite correct.

Q. Consequently, that was an item reimbursing the State for one that had been previously misappropriated somewhere, wasn't it?

A. I prefer not to follow you literally in your language. I will say that it was an item covering a collection that had been placed in the Austin National Bank.

Q. Yes, sir; and was not a withdrawal of funds in that amount that were put in this account, was it?

A. You are quite correct.

Q. In your analysis and final conclusion, on page 14 of your report you state the facts to be that the amount in the Texas Bank and Trust Company unaccounted for on the date of your report was \$2,389.14?

A. That is correct.

Q. Now, let's go to the Austin National Bank. Did you trace the source of those credits?

A. You mean determine the source of payment?

Q. Yes, sir.

A. I did.

Q. You found a total amount of \$54,364.55 that had been deposited in that account?

A. That is right.

Q. Did you find one single dollar of that to be personal funds of Mr. Terrell?

A. I found no item that appeared to be personal funds of Mr. Terrell. There were two items, one for \$26.32 and one for \$50.00, that I could not determine the source of. The other items were determined, and I found none that indicated that they were personal deposits of Mr. Terrell.

Q. The two amounts aggregated \$76.32?

A. \$41.32.

Q. You said \$50.00 and \$26.32?

A. \$15.00.

Q. \$15.00, you meant to say. That is \$41.32. Now, that \$41.32 is the only item you cannot identify?

A. Those are the only items that I cannot identify to my entire satisfaction.

Q. You did determine that there was withdrawn from that bank account more than \$3,000.00 for personal uses, didn't you?

A. I will answer that question by saying that I have listed withdrawals from some date in April, I believe April 25, 1929. We listed checks paid by the Austin National Bank for the period from April 25, 1929, to January 8, 1930. Now, in submitting that list we make no allocations. That is, on page 24. We concerned ourselves primarily with finding the source of the collections. Then we next concerned ourselves with finding the disposition of them, whether or not they were finally accounted for; and that is what we considered to be vital in the matter.

Q. Don't you consider it to be vital as to whether the State Comptroller had used these funds for his own personal usage?

A. We certainly did, Mr. Stevenson, and that is the reason we have the list there for the information of the Comptroller and the parties who may be interested in seeing this type of evidence. It is there. We have disclosed the facts exactly as they existed.

Q. Now, your itemized statement of

checks only begins with April, 1929, does it not?

A. That is correct.

Q. Why didn't you list the checks for the period of time previous to that?

A. They were not available to us. We could not locate them.

Q. You were not furnished with those cancelled checks?

A. We were not.

Q. And, therefore, you have not been able to give the payees of those checks?

A. That is correct.

Q. You do have the amounts of them, do you not?

A. We have the amounts that show to have been paid by the banks. That is the only source we found with respect to the amounts.

Q. Who furnished you the checks you did list?

A. They were furnished by someone in the Department there, probably Mr. Hardeman.

Q. Did you ask Mr. Terrell for them?

A. No. I did not ask Mr. Terrell, because I will say, to begin with, that it was generally understood that it was stated by Mr. Terrell that those checks were not available, and the only thing I ever said with reference to those checks to Mr. Terrell was to tell him that it was very desirable that we have them, if they could possibly be located, or if he had any idea where we might look for them. I would be glad to do it.

Q. And he did not disclose any record of them, did he?

A. He did not.

Q. Did you see any of the original checks?

A. Of this bank account he had?

Q. I mean from April on this way.

A. As a matter of fact, I did not examine that particular phase of it. Mr. Brunken is the man who made up that list.

Q. You did not examine the list in person?

A. I did not.

Q. And the list that is made is from Mr. Brunken's tabulation?

A. Yes, sir. I accepted it as being correct inasmuch as it was entirely in agreement with the report submitted by Mr. Lynn, and I thought that two capable accountants would not make the same mistake with reference to that list.

Q. As a matter of fact, the checks as listed by Mr. Lynn were correct, weren't they, Mr. Phillips?

A. That is my belief.

Q. Didn't you check it to be certain?

A. I have already told you I did not

check it, but Mr. Brunken checked it, and it agreed with Mr. Lynn's report.

Q. That those checks listed were correct?

A. That is correct.

Q. Now, Mr. Phillips, that bank account, as I have already stated, had \$54,360.00 deposited in it.

A. That is substantially the amount.

Q. The account was closed out on the eighth day of this year, wasn't it?

A. That is true.

Q. And you made up your report what date?

A. I do not recall now; February 15, 1930.

Q. The date of Mr. Lynn's report, I believe, was January 29?

A. January 27, supplemented on January 29.

Q. Now, we will say that it was made out January 27 or 29.

A. Yes, sir.

Q. If you had been called on to audit this account on January 26, would you have listed the \$5,083.00 as unaccounted for?

A. On January 24?

Q. Yes, sir.

A. It was not deposited until January 27.

Q. But what I am talking about is the account was closed on January 8?

A. That is correct.

Q. At the date that account was closed, the \$5,083.00 was unaccounted?

A. At the date the account was closed it was.

Q. That money had been spent, hadn't it?

A. Well, I will answer that question by saying withdrawals had been charged to the account by the bank.

Q. Somebody checked that out, didn't they?

A. That is a matter for every man to decide, whether it was checked out, or whether or not the bank simply charged it to the account. I would have to say that the money was withdrawn.

Q. And do you not mean to insinuate that the bank charged it to the account, do you?

A. I believe I will take it that the amount was withdrawn, and have answered your question.

Q. The amounts had been withdrawn and the account closed on January 8?

A. The account shows closed on January 8. I believe that date is correct.

Q. And you have determined that that amount of \$5,083.00 belonged to the State of Texas on that date, haven't you?

A. I will say this, that the records

clearly indicate that it belonged to the State, and that was recognized apparently by depositing in the State Treasury that amount on January 27, 1930.

Q. Now, Mr. Phillips, you have given an opinion to Senate McGregor to the effect that when this payment was made from other sources that discharged the obligation to the State. In other words, it cleared the record of this, to use your language, isn't that right?

A. Yes, in so far as the State had any interest in the sum of money involved the State had been satisfied.

Q. You think the State satisfied with the loss of four years' interest on a sum of money that has been used personally by one of its officials during that time?

A. Mr. Stevenson, that is a matter of opinion. I am only testifying with respect to the disposition of the particular sum involved.

Q. I believe you are an accountant, and you know that the State lost four years' interest during that time, don't you?

A. The State did not get interest on that sum, so far as I am able to ascertain.

Q. And you know, from your examination, that the amount deposited in the Treasury was only the exact amount that was paid in by these two inheritance tax items back yonder in 1926, don't you?

A. That is correct.

Q. And that there was not a single penny added for interest?

A. That is correct.

Q. Now, in answer to a hypothetical question of Senator McGregor, you stated that this amount of \$2,334.00 was deposited down here in the Austin bank, awaiting the determination of the owner, that would clear the record. You mean to say that the loss of interest on that item ought not to be accounted for during all of the time it has been withdrawn from that bank?

A. I do not mean to say anything of the kind at all, Mr. Stevenson. I merely am talking with respect to the principal sum involved.

Q. Who employed you to audit the Comptroller's accounts, Mr. Phillips?

A. Mr. Terrell.

Q. Mr. Terrell himself?

A. Yes, sir.

Q. Mr. Terrell is responsible for the payment of your fee, isn't he?

A. Well, I don't know whether he is or not. I mean that I have never discussed fee with Mr. Terrell at all.

Q. You don't aim to make the State pay it?

A. I do not think the State would be liable for it.

Q. Why didn't you ask Mr. Terrell personally for all of this data that you failed to find and which you knew would be pertinent to the presentation of this case?

A. You ask why I did not ask him personally, and I will say to you again, and this testimony is in the record from me before, that I went to Mr. Terrell and told him it would be very desirable to have this data, and if he knew of any lead that would enable me to locate it I wished he would let me have it.

Q. And he didn't give you any information?

A. No.

Q. Now, you mentioned, Mr. Phillips, about auditing his account in the American National Bank. Let's take that up for a moment. You did that, didn't you?

A. I did not audit the account in the American National Bank in any sense of making a detailed audit. I would say that at the time we accepted the assignment we accepted the assignment to determine the source of deposits that had been made in the Texas Bank and Trust Company, and the Austin National Bank and the American National Bank account was not included in our original plan of audit at all.

Q. In your detailed report, however, you did make mention of the American National Bank account, didn't you?

A. I made mention of it, yes.

Q. I will ask you if you did not use this language: "We have made a careful examination of other deposits in this account, but have been unable to identify any others as transfers from either of the so-called special accounts, nor have we been able to ascertain that any of these deposits represented collections made by your Department for 'State' or 'escrow' purposes."

A. That is correct.

Q. You made that statement?

A. Yes, sir.

Q. I will ask you what Mr. Terrell told you about that account?

A. I will say this with respect to that account: When I first came over here we had taken up the matter of an audit of the Austin National Bank and the Texas Bank and Trust Company accounts, and I was told that a sum of money had been transferred from the Austin National Bank, I believe \$563.38, to the American National Bank. I asked if we should not consider the advisability of having that account audited, too. That was, I believe, before the

second report from the Auditor, and Mr. Terrell told me at that time that that bank account was not involved and he did not see any reason for going into it.

Q. Didn't he tell you it was a personal account?

A. I do not recall that we discussed whether or not it was personal.

Q. Anyway, he told you it was not involved?

A. Yes, sir, he told me that.

Q. And that there was no use to go into it?

A. He told me it was not involved in the Auditor's report.

Q. And after you got your data, you did find out he had transferred \$500.00 of the State funds from the Austin National Bank to that account?

A. I so stated in my report. I stated further in my report—

Q. Wait. I will ask you this question: You also stated that \$563.38 was transferred out of the Austin National Bank and into that account, didn't you?

A. I did.

Q. Now, then, that makes a total of \$1,063.38?

A. Mr. Stevenson, you are asking questions, you have repeated one item twice, and you have asked me concerning an item you further had in mind.

Q. I said those two items made a total of \$1,063.38?

A. They are not two items of \$536.00.

Q. One item was \$500.00 and one \$563.38?

A. That would total \$1,063.38.

Q. Both of those are correctly stated as having been transferred out of the Austin National Bank?

A. I think that is correct.

Q. I am not trying to mislead you at all. I am taking the facts as they are. Now listen here: After you made that statement that this \$1,063.38 went into the American National Bank account, then you stated this, what I have read, that you had made this careful examination of other deposits and could not trace any of them to "State" or "escrow" items, didn't you?

A. That is right.

Q. All right. Then you didn't find two postage warrants that went into that account, did you?

A. I did not.

Q. Have you since examined Mr. Lynn's report since your audit?

A. His report of the twenty-ninth?

Q. First report, with reference to these two \$600.00 items; his testimony, you heard him testify?

A. I did hear him testify to that effect.

Q. Since that time have you made an examination?

A. I have not.

Q. You have not?

A. No.

Q. Have you any reason to doubt the accuracy of his statement?

A. I have no reason at all to doubt the accuracy of his statement in that respect. I have no doubt that those warrants were written and deposited just as he said. I accept it as being a fact.

Q. And they went into the American National Bank account?

A. I would like, in explanation of our examination of the deposits, to make a statement, if you do not mind.

Q. You made a statement in this report I read to you just now.

A. That is quite true, and I stick by it as being absolutely correct and I challenge anybody to refute it.

Q. You think it was correct, though you had not been able to identify any of the items?

A. That is quite true. I just simply wanted to get it in the record.

Q. I am offering that to show that your examination of that account was not quite as complete as maybe your report would indicate?

A. Well, I think it was.

Q. Well, you did not find those two \$600.00 items, did you?

A. No, I did not find them, and would dare say my good friend Mr. Lynn had not found them at the time my report was made, and he had been on the work longer than I had.

Q. Now, Mr. Phillips, in your conclusion on page fourteen you definitely state that you found in the Austin National Bank a total of \$9,900.05 that had not been accounted for, didn't you?

A. That is correct.

Q. And that at this time has not been accounted for so far as you know, has it?

A. That is correct.

Q. Now, Mr. Phillips, if you had added to your report \$5,883.00 that had been withdrawn from that account 'at the time it was closed on January 8, 1930, then Mr. Lynn's statement of the total amount unaccounted for is correct, isn't it?

A. I will answer that question this way: My report was rendered after those deposits into the Treasury, and I prefer to answer that if Mr. Lynn will give credit for those items he will be in agreement with me.

Q. I want you to answer it the other

way. If you had been auditing that account at the date it was closed, on January 8, 1930, wouldn't the total shortage have been what Mr. Lynn said it was?

A. If you ask that question in that language, you are entirely correct.

Mr. Stevenson: Does anybody have any questions?

Q. It has been suggested that I bring this matter out clearly for the information of the committee. Those accounts that you state are unaccounted for, I will ask you if it is not a fact that there is not any money in either one of those accounts to pay them with?

A. At the time I made the examination, there were no funds in either account out of which payments could have been made.

Q. Both accounts were closed and there was no money there?

A. That is correct.

Q. Now these items you list on page fourteen, being the Independent Oil Company, \$2,334.84; Magnolia Petroleum Company, \$3,437.14; and the Magnolia Petroleum Company, \$1,262.40; and this Al. G. Barnes Circus account, \$2,458.00; and the Miller Brothers' 101 Ranch Circus, \$337.50; everyone of those items went into that account, didn't they?

A. Everyone went into that bank account.

Q. They are not accounted for?

A. That is right.

Q. There is no money to pay them with in that account, is there?

A. That is correct.

Q. That is the long and short of your audit, isn't it?

A. That is correct with respect to those items.

Q. Now the Texas Bank & Trust Company, the items you have mentioned, from Magnolia Petroleum Company, \$1,472.80; and the Magnolia Petroleum Company, \$140.40; and then the initial deposit of \$775.94; none of those items have been accounted for, have they?

A. That is correct.

Q. And the money is all checked out and gone, isn't it?

A. That is right.

Q. There is nothing there to pay them with?

A. There was not at the time I made the examination of the account.

Q. That is what I am talking about. You did not audit the affairs of the Texas Tax Record Company, did you?

A. I did not.

Q. You were not requested to make an audit of that company, were you?

A. I was not.

Mr. Stevenson: All right.

Redirect Examination.

By Mr. McGregor:

Q. Mr. Phillips, when you were interrogated with reference to the stamp warrant items, you indicated that you desired to make a statement, but did not do so. What was it you wanted to say?

A. I simply wanted to say this, Senator, and I think this statement may as well be in this record: That the responsibility resting on the shoulders of a public accountant is somewhat different from most any other profession, and if he has any sense of loyalty to the fundamentals of the profession he is only concerned with fact finding; and we set about this engagement with that thought in mind, and no other, and we accomplished our purpose with respect to the two bank accounts. Now when we made the examination of the American National Bank deposits, I went down to the bank and went back in the cages, and down in the vaults, and took copies of the deposit slips, and where there was any information at all on the slips, I put in on my copy. I came back to the office and made a record of those slips and furnished Mr. Terrell a copy of them, and I told him if he could possibly identify the source of a single deposit, I would like to have it. And he did identify some items that afternoon, but there were others he could not. And I said to him that I was very anxious that we clear up any deposit in this bank, and I wanted him to think over it during the night and see if something would not come back to him, and I left a copy of the list of deposits with Mr. Terrell; and I particularly talked to him about the two \$600.00 items; and the record will show that the date of the deposits is the same day of the month and just eleven months between them, and we discussed that and I thought that perhaps would refresh his memory and enable him to give me some information with respect to those deposits. And that is the extent I went to in an effort to locate the sources of those deposits. I had not examined, as a matter, of course, all of the Treasury warrants that had been issued by the Comptroller's Department. I could not have done it within the time allotted to me.

Q. Did Mr. Lynn make any refer-

ence to these two warrants in either of his reports?

A. If he did, I have been unable to find it.

Q. Was not the first public reference that was made about these two warrants made in Mr. Lynn's testimony?

A. That is correct.

Q. Now is there any other item or matter you wish to explain?

A. No, that is the only thing I have in mind.

Mr. McGregor: That is all.

Mr. Chairman, we are somewhat in the same attitude possibly we were the other night. On Saturday evening the committee will remember we waived cross examination of the Auditor in order to expedite matters and rather than to hold him over. We think if this hearing is now suspended and resumed in the morning we will be able to get rid of some matters under a winnowing out process, and go over our proof, and be able to close by noon tomorrow.

Mr. Petsch: Mr. Chairman, I wonder, Mr. McGregor, if you have any witnesses here you are going to put on? If you have, I don't see why we could not take up the time now and dispose of the matter. We won't be able to work tonight on account of committee meetings. I believe we ought to expedite this matter and put on all the witnesses we have here. We ought to work from now until 6 o'clock and dispose of as much of this testimony as possible. I think we ought to work until 6 o'clock.

Mr. McGregor: I think we will be able to dispense with some of the witnesses by taking the matter up that way. This is just like trying a lawsuit. I think if we pass this matter until morning we will be able to dispense with some of those witnesses, rather than call them now, but if we are put to the test, of course, we will put them on. Just to take the Committee into my confidence, Mr. Stevenson, in his cross-examination of Mr. Phillips indicated that his position would be on these warrants that they were paid to Mr. Martin and that the employees were paid twice. The endorsements on the warrants indicate that they were paid to Mr. Martin and there the presumption would stop. But his question may have made it necessary for us to bring the witnesses in here to swear that they were not paid twice. Now, I want to see if I cannot eliminate that. You will not save time. Speed in law

is going slow, and you will not save any time by acting in a hurry with it.

Mr. Justiss of Navarro: Mr. Chairman, I make the motion that the Committee rise and report progress and ask leave to meet again at 9:30 tomorrow.

Mr. Petsch: Mr. Chairman, before we get out of this Committee, I think we ought to make this statement. In view of the statement made by Senator McGregor, I think possibly the Senator misunderstood the contentions that were made by the Committee for the House when he made the statement that we took the position that those different parties had been paid twice who received the checks listed in Mr. Lynn's report. That was not exactly in accordance with our contention. Our contention is to this effect, that the State of Texas was out the money twice. We did not do the paying, we never had charge of the checks, and we do not make any contention to the effect that those particular parties got the money twice. We have nothing to do with that, and make no such claim. We just say the State of Texas paid it twice.

Mr. McGregor: If you want us to call them, we will call them.

The Chairman: The gentleman from Navarro moves that the Committee rise and report progress and ask leave to meet at 9:30 tomorrow.

The question was thereupon taken, and the motion prevailed.

SEVENTH DAY.

(Thursday, February 27, 1930.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Barron.

The roll was called, and developed the fact that there was not a quorum present.

Mr. Sanders moved a call of the House for the purpose of securing a quorum, and the call was duly ordered.

The Speaker then directed the Doorkeeper to close the main entrance to the Hall and instructed the Sergeant-at-Arms to lock all other doors leading from the Hall, and stated that no member would be permitted to leave the Hall without written permission from the Speaker.

On motion of Mr. Sanders, the Sergeant-at-Arms was instructed to bring in all absent members within the city who are not ill.

The roll was again called, and the following members were present: